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# Senate Education and Employment References Committee Inquiry - Penalty Rates

July 2017



Australian  
Chamber of Commerce  
and Industry



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# 1 Introduction and context

1. The Australian Chamber of Commerce and Industry (Australian Chamber) welcomes the opportunity this inquiry provides to focus on:
  - a. job opportunities, particularly for our young people and first time job seekers;
  - b. the changing expectations of consumers and desire for businesses to provide services to local communities that meet those expectations; and
  - c. the challenges for operators of smaller businesses to sustainably do business in the retail and hospitality industries in highly competitive markets.
2. The Australian Chamber also welcomes the opportunity to correct misinformation and clarify how the Fair Work Commission's 23 February 2017 decision to marginally reduce some penalty rates should be considered by the Parliament.
3. The submission is also intended to assist the Committee in understanding the substantial problems that are increasing plaguing our enterprise bargaining system, which is in turn reducing the scope for both employers and employees to secure the benefits enterprise bargaining was designed to provide.
4. The submission also responds to proposals to further restrict what can be negotiated under enterprise agreements and explains why such a move toward recentralisation is a move in the wrong direction.

## 1.1 The retail and hospitality sectors face challenging circumstances

5. This inquiry is asked to focus on two industries; retail and hospitality, including fast food. These industries have some unique characteristics including high representation of small business.
6. Small businesses account for:
  - a. 34% of the value added of both the retail and accommodation and food services industries.<sup>1</sup>
  - b. 38% of total employment in the retail industry.<sup>2</sup>
  - c. 42% of total employment in the accommodation and food services industry.<sup>3</sup>
7. These industries are in the top five in terms of total employment in small businesses.<sup>4</sup>

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<sup>1</sup> Australian Small Business and Family Enterprise Ombudsman (2016) [Small Business Counts: Small Business in the Australian Economy](#), p.12

<sup>2</sup> Australian Small Business and Family Enterprise Ombudsman (2016) [Small Business Counts: Small Business in the Australian Economy](#), Table 8, p.17

<sup>3</sup> Australian Small Business and Family Enterprise Ombudsman (2016) [Small Business Counts: Small Business in the Australian Economy](#), Table 8, p.17

<sup>4</sup> Australian Small Business and Family Enterprise Ombudsman (2016) [Small Business Counts: Small Business in the Australian Economy](#), Table 10, p.19

8. These industries:
  - a. have higher levels of closure rates compared with the average of all industries;
  - b. face a fierce competitive environment;
  - c. make a significant contribution to youth and low skilled employment; and
  - d. have traditionally provided stepping stones into the labour market for many Australians.
  
9. However these sectors are facing difficult circumstances that are exacerbated by the high cost of labour in Australia and in the retail sector in particular we are seeing concerning trends with business closing and employees losing jobs. Some have made claims of a pending 'recession' in the retail sector:

***Retailers on verge of a 'recession'<sup>5</sup>***

*Mathew Dunckley, 9 May 2017*

*There is no sign of respite for the nation's struggling retailers, particularly department stores, as shoppers refuse to spend in the face of an uncertain economy.*

*The latest retail sales data from the Australian Bureau of Statistics showed a 0.1 per cent fall in March at the same time as many economists had been tipping a rise.*

*Compared to a year ago, retail sales have now grown just 2.1 per cent the slowest rate of annual growth since 2013.*

*"The retail sector is verging on recession", Citi economist Josh Williamson said in response to the data.*

*"Retail trade growth has now been negative in three out of the last four months (no growth per month on average), the sector's worst performance since July to November 2012."*

*Mr Williamson said the looming crackdown on home lending standards by the prudential regulator would only squeeze consumers more.*

*The lacklustre data follows a warning from the Reserve Bank of Australia governor Philip Lowe last Friday that the bank's key economic concern was consumer spending and how that would react to any slowdown in housing.*

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<sup>5</sup> <http://www.smh.com.au/business/retail/retailers-on-verge-of-a-recession-20170509-gw0qa4.html>

*CBA's economists said the result was "much weaker than expected" tipped retail to languish as long as underemployment remained elevated and wages growth was weak.*

*While spending was lacklustre around the country, CBA's team said conditions were especially tough in Western Australia and Queensland.*

*Cyclone Debbie and storms in parts of NSW would have had an impact, a CBA report said.*

*"Spending is still taking place, just in a much more sedate fashion, with more circumspect consumers," said CBA economist Craig James.*

*Trade in department stores (down 0.6 per cent) fell the most in the March and is down 2.7 per cent on a year ago.*

*Myer is due to unveil its quarterly sales performance on Friday. On Monday the stock fell close to 10 per cent after a scathing research not predicted new international rivals would smash its sales.*

*Whilst Myer shares lifted slightly on Tuesday, other retailers were in the sellers' sights.*

*Harvey Norman shares fell 5 per cent to \$4.06 while JB Hi-Fi was down 3.87 per cent to \$24.11.*

*A number of high profile retailers have collapsed in the past few months including Pumpkin Patch, Victoria Station, Marcs and David Lawrence.*

*Australian Retailers Association executive director Russell Zimmerman said the disappointing March result was a symptom of "escalating operating costs and systemic economic pressures".*

*"The generally weak trade figures across the board appear to be caused by myriad of factors including low consumer confidence, political uncertainty, international competition and the effects of housing affordability on hip-pockets," he said.*

*UBS economist George Tharenou said prices barely lifted in the sector with inflation running at about 1.4 per cent for the year.*

10. Real annual volumes growth fell to just 1.2% in the March quarter, the lowest level since September 2011, as the following figure illustrates:<sup>6</sup>

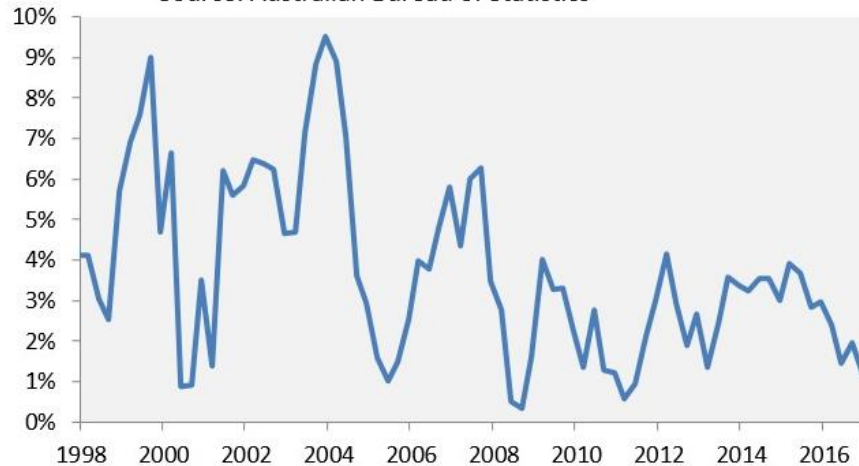
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<sup>6</sup> Source: [The Business does the "retail recession"](#)

## Annual Retail Sales Growth (Chain Volume Measure)

MACRO  
BUSINESS

Source: Australian Bureau of Statistics



11. **Negative growth in jobs and hours:** There has been negative growth in both jobs and hours worked in the retail industry running the risk that there will be increasingly fewer entry level jobs for our growing population:
  - a. In May 2017 1,222, 500 Australians worked in the retail sector.
  - b. In May 2013 1,235,400 Australians worked in the retail sector.
  - c. At the end of 2007 1,240,900 Australians worked in the retail sector.<sup>7</sup>
12. **High Competition:** The RBA tells us that competitive pressures in the retail sector continue to put downward pressure on consumer prices.<sup>8</sup> This is one of the reasons for sustained levels of low inflation and evidences the inability of retailers to pass on escalating costs in competitive, digitally connected marketplace. Cost increases are absorbed by retail businesses and when this becomes unsustainable it risks seeing businesses closed and jobs lost.
13. **Slow growth:** Retail trade experienced relatively lacklustre growth of 1.2% over the year to December 2016.<sup>9</sup> Accommodation and food services was also relatively flat, growing by just 1.3% over the year to December 2016.<sup>10</sup>
14. **Low profits:** Seasonally adjusted gross operating profits in retail fell 2.9% in current prices and 0.4% in volume terms over the year to December 2016.<sup>11</sup> This was more pronounced

<sup>7</sup> ABS Cat. No. 6291.0.55.003 Labour Force, Australia, May 2017, Detailed, Quarterly, [Table 19](#)

<sup>8</sup> Reserve Bank of Australia, Statement on Monetary Policy, May 2017, p. 49.

<sup>9</sup> ABS, Cat. No. 5206.0 - Australian National Accounts: National Income, Expenditure and Product, Dec 2016

<sup>10</sup> ABS, Cat. No. 5206.0 - Australian National Accounts: National Income, Expenditure and Product, Dec 2016

<sup>11</sup> ABS Cat No.5676.0 Business Indicators Dec 2016 p. 11

in the accommodation and food services, were gross operating profits contracted by 14.4% in current prices and 10.2% in volume terms.<sup>12</sup>

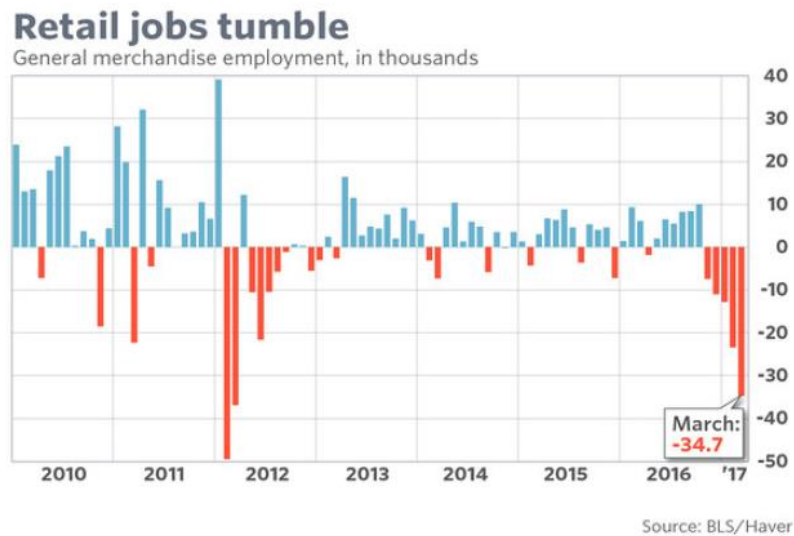
15. **Low productivity:**

*In the 5-year period to 2015-16, (labour) productivity in the whole economy grew by 1.8 %, while productivity in the (16-industry) market sector grew by 2.3 %. Over this period, productivity in the award-reliant, retail and accommodation and food services industries grew by 1.9 and 0.8 % respectively, below market sector growth.<sup>13</sup>*

*In 2015-16, productivity in the whole economy grew by 0.9 %, while market sector productivity grew by 1.5 %. In the retail and accommodation and food services industries, productivity growth was also less than market sector growth at 0.8 and 0.2 % respectively.<sup>14</sup>*

16. **Wider global trend:** There is also a wider global challenge for the retail sector, with discussion in the US of ‘retail meltdown’ and a ‘retail apocalypse’ amidst widespread store closures and bankruptcies.<sup>15</sup>

17. This has led to a major fall in jobs in the US retail sector<sup>16</sup>:



18. **High levels of award reliance and low paid business operators:** As explored further in this submission, retail and accommodation and food services have high levels of award reliance. In comparison to employees, both employing and non-employing small business

<sup>12</sup> ABS Cat No.5676.0 Business Indicators Dec 2016 p. 12

<sup>13</sup> Australian Government Submission to the Fair Work Commission Annual Wage Review 2017, para 99

<sup>14</sup> Australian Government Submission to the Fair Work Commission Annual Wage Review 2017, para 100

<sup>15</sup> Source: [What in the World Is Causing the Retail Meltdown of 2017?](#)

<sup>16</sup> Source: [The retail sector is shedding jobs like it's a recession \(US\)](#)



owners in award reliant industries work longer hours, have more experience, and make significant capital investments yet have similar earnings distribution.<sup>17</sup>

## 1.2 Employees in these industries need more hours

19. Australia is facing significant labour market challenges with underemployment posing particular challenges. Underemployed workers are defined by the ABS as part-time workers who want, and are available for more hours of work than they currently have, and full-time workers who worked part-time hours during the reference week for economic reasons (such as being stood down or insufficient work being available). There is significant demand for additional hours of work in the retail and hospitality industries.
20. According to the latest ABS data:<sup>18</sup>
  - a. 178,400 Australians working in the accommodation and food services industry are underemployed (20.0% of 892,500 employees working in the industry).
  - b. 196,900 Australians working in the retail industry are underemployed (16.1% of 1,222,500 employees working in the industry).
21. The Fair Work Commission's 23 February 2017 decision to marginally reduce some penalty rates was expressly reached on the basis that, amongst other benefits and considerations, the evidence had established that reducing penalty rates was likely to lead to "an increase in overall hours worked".<sup>19</sup>
22. Reversing or overriding the decision would see the Parliament choose to reject a measure independently arbitrated on the basis that it was likely to help redress underemployment. Such a move would risk negative employment outcomes is will deliver bad policy outcomes for small businesses and the community.

## 1.3 These industries are highly award reliant

23. Employment in the retail and hospitality industries are characterised by:
  - a. A high proportion of employees working directly on award rates of pay, without over-award payments.
  - b. Comparatively lower levels of enterprise agreement coverage.

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<sup>17</sup> See Australian Chamber analysis if the 2011 census data in this submission:  
[https://www.fwc.gov.au/documents/sites/wagereview2014/submissions/acci\\_amendedsub\\_awr1314.pdf](https://www.fwc.gov.au/documents/sites/wagereview2014/submissions/acci_amendedsub_awr1314.pdf)

<sup>18</sup> ABS Cat. No. 6291.0.55.003 Labour Force, Australia, May 2017, Detailed, Quarterly, [Table 19](#)

<sup>19</sup> [2017] FWCFB 1001, *Summary*, at [31]

24. Accommodation and food services has the highest levels of award reliance of all industries (around 42.7% of employees in the sector are paid exactly the award rate and not paid more than that award rate of pay).<sup>20</sup>
25. Retail has the third highest levels of award reliance of all industries (34.5% of employees in the sector were paid exactly the award rate and are not paid more than that rate of pay).<sup>21</sup>
26. The proportion of employees directly reliant on awards, with no enterprise agreement or over-award payment has risen significantly in the retail Industry since 2010, and dramatically between 2014 and 2016:

2010	2012	2014	2016
22.3%	25.6%	28.5%	34.5%

27. This is part of a wider trend that employers fear is a ‘canary in the coal mine’ telling us that we have a serious problem across our enterprise bargaining system. Looking at all agreements, we see an increasing proportion of employees working under awards only, and a dramatic rise in the past two years:

2010	2012	2014	2016
15.2%	16.1%	18.8%	24.5%

28. Employers can accept that structural change in the economy will play a role, for example shifts away from manufacturing and resources construction may weigh against agreement coverage. However employers cannot accept, and the community should not accept, that enterprise bargaining is going backwards. That should tell us there is a serious problem in the system. Enterprise agreements are becoming an increasingly less feasible option for employers, including those in dynamic services sectors that need to be able to implement arrangements that enable them to respond to their constantly changing markets.
29. We ask the Committee to extend its consideration to the real issues confronting bargaining:
- How it can be that we have more Australians working on award rates only, with no agreement or over-award payment than we had in 2010? This is precisely the opposite of how our mature enterprise bargaining system is supposed to work (which should in time see fewer and fewer Australians working directly on award rates of pay).
  - What is causing this and how does Parliament need to act to reverse this trend and get our bargaining system back on track?

## 1.4 Understanding the challenge – bargaining is going backwards

<sup>20</sup> FWC, Statistical report—Annual Wage Review 2016–17, Table 7.1, derived from ABS, Employee Earnings and Hours, Australia, various, Catalogue No. 6306.0

<sup>21</sup> FWC, Statistical report—Annual Wage Review 2016–17, Table 7.1 derived from ABS, Employee Earnings and Hours, Australia, various, Catalogue No. 6306.0

30. Bargaining is already going backwards.
- In December 2013 there were 1,049 current retail agreements, applying to 390,700 employees<sup>22</sup> (31.2% of 1,250,500 then employees working in the industry).
  - In December 2016 there were 237 current retail agreements, applying to 59,300 employees<sup>23</sup> (4.6% of 1,247,300 employees then working in the industry).
  - The total number of retail agreements has fallen by 77.4% in three years.
  - The total number of employees covered by retail agreements has fallen by 84.8% in three years.
31. Accommodation and food services also saw a reduction in the overall number of agreements between 2013 (829 current agreements) and 2016 (413 current agreements), although the fall of in overall numbers of employees working under agreements was less dramatic (from 157,800 to 143,300). This may suggest:
- Larger accommodation and food services employers continue to bargain and finalise agreements.
  - Some medium to smaller enterprises no longer bargain.
  - There certainly has been no overall growth in bargaining in the sector.
32. This is not an academic point. Bargaining and access to agreement making is the path our workplace relations system provides to secure higher incomes and greater job security in more productive and competitive enterprises. Stepping off the award and onto an enterprise agreement has been recognised for more than 25 years as one of the fundamental goals of our workplace relations system as is explored in further detail in this submission.
33. As Labor said in sketching its plans for our current workplace relations system:

*Collective enterprise agreement making and democracy will be the heart of Labor's industrial relations system. Collective bargaining allows balanced, cooperative arrangements that foster improved productivity across a business and provide the flexibility employers and employees want. Collective bargaining is the best way to ensure working arrangements are tailored to suit the needs of an individual business and its employees...*

*Collective agreements deliver benefits to employees above and beyond the safety net and are the most efficient and productive form of workplace arrangements for business.<sup>24</sup>*

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<sup>22</sup> Trends in Federal Enterprise Agreements, December 2016, Table 8

<sup>23</sup> Trends in Federal Enterprise Agreements, December 2016, Table 8



34. However, in practice our system is increasingly denying opportunities for flexible and tailored arrangements for employees and employers in the retail and hospitality industries.
35. It must be acknowledged that as customer driven, service industries with low margins, scope to bargain was always going to be challenging, but this is not a reason to abandon the goal of agreement making in these industries or to accept a situation in which dramatically fewer enterprises and employees have access to the bargaining system.
36. We wish to place this challenge directly before this Committee. If an inquiry is going to be convened which raises bargaining in the retail and hospitality industries, it should address the most significant and pressing challenge, which is that we have a vast drop off in access to the opportunities of bargaining which impacts on both employees and businesses.
37. This Committee should be asking itself why bargaining is increasingly less viable in retail and hospitality, and how policy might help see this redressed.

## 1.5 What this Committee should conclude

38. This inquiry seems to have highly political origins. The Australian Chamber recommends against applying a highly politicised lens to a matter that has been subject to the highest level of independent consideration through the Fair Work Commission, based on expert and lay evidence. There have been few more evidenced and substantial cases in the Fair Work Commission's 110 year history than the review of penalty rates.
39. Employers commend to this Committee conclusions that:
  - a. Recognise and engage with:
    - i. The substantial pressures facing the retail and hospitality industries.
    - ii. Unemployment and underemployment challenges, particularly for young people and those in particular regional / local labour markets.
    - iii. The link between the two and the opportunities that the retail and hospitality sectors can provide for labour market engagement and career commencement (and for small business creation).
  - b. See the Parliament respect the Fair Work Commission's independent consideration of this matter under the rules put in place by the former Labor government, with Senate support from the Greens, when it made the amendments that became the *Fair Work Act 2009* (Cth)(Fair Work Act).
  - c. Do not attempt to legislatively override the Fair Work Commission's 23 February 2017 penalty rates decision.<sup>25</sup>

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<sup>24</sup> Australian Labor Party (2007) *Forward with Fairness*.

<sup>25</sup> [2017] FWCFB 1001



- d. Do not seek to further restrict what employers and employees can agree to in enterprise agreements and in particular do not further restrict what can be agreed on hours and remuneration in enterprise agreements.
- e. Recommend against passage of the *Fair Work Amendment (Pay Protection) Bill 2017*(Cth), or any other legislation directly or indirectly having the effect of:
  - i. Overriding the Fair Work Commission's 23 February 2017 penalty rates decision.
  - ii. Further / additionally restricting what can be agreed on hours and remuneration in enterprise agreements.

## 2 Understanding penalty rates

### 2.1 Why was penalty rate reform needed?

40. In our modern, digitally connected economy there is no rational basis for opposing a moderate revision of excessive penalty rates applying at times where businesses are expected to trade and at times when employees expect to and have a desire to work. In sectors such as retail and hospitality, a revision of the penalty rate will help deliver benefits for consumers who want to access services, businesses expected to deliver the services and persons seeking work in those sectors because the hours suit their personal priorities at that particular juncture in their life.
41. The revision of penalty rates in the retail and hospitality sectors was long overdue. Penalty rates had their inception at a time very different to the one in which we are now living and working. As noted by Professor Phil Lewis of the University of Canberra:

*The notion of a 'penalty' rate has its origin in a labour market quite different from that of much of the Australian labour market today. The Australian economy used to be characterised by mostly males working full-time industrial jobs. There was little part-time or casual work. Working married women and jobs with flexible hours were rare (Norris et al. 2004). Most retail outlets shut at midday on Saturday and reopened on Monday. The weekends were, for many, the only time available for socialising, recreation, participating in sport and worship.<sup>26</sup>*

### 2.2 What were penalty rates designed to do?

42. The rationale underpinning penalty rates can be observed in a number of decisions of Australia's industrial tribunals going back almost one hundred years:
- a. The cases drew a **distinction between working on a Sunday and working overtime on a Sunday** (i.e. with the effect that a person would be required to work a seven day week) and different rates were prescribed for these circumstances. For example, in the *Gas Employees Case* [1919] 13 CAR 437, Higgins J stated:

*The true position seems to be that the extra rate for all Sunday work is given on quite different grounds for an extra rate for work on the seventh day. The former is given because of the grievance of losing Sunday itself – the day for family and social and religious reunions, the day on which one's friends are free, the day that is most valuable for rest and amenity under our social habits; whereas the latter rate is given because seven days per week for work are too many. This involves that even if time and a half be paid for Sunday work; there should be extra pay also for the seventh day of work. But the extra pay should be time and a half, not double rates. The norm of*

<sup>26</sup> Lewis P, 'Paying the penalty? The high price of penalty rates in Australian restaurants', *Agenda: A Journal of Policy Analysis and Reform*, Vol. 21, No. 1, 2014: 5-26.

*work being six week days and Sundays free, the payment for departure from the norm should be two time and a half rates, which is equivalent to one double rate.*<sup>27</sup>

- b. One of the reasons for Sunday penalty rates was to **deter employers from trading on Sunday**.<sup>28</sup>
    - i. There was an element of compensation in Sunday rates related to “the earliest **Christian teaching to refrain from all unnecessary work and labour on Sunday**”<sup>29</sup> and because Sunday was a day for “**religious reunions**”<sup>30</sup> or “**religious observance**”.<sup>31</sup>
    - ii. Additional rates for weekends were given because these were “**not regularly working days for all employees in the industry**”.<sup>32</sup>
43. While there were other reasons for Sunday penalty rates established through the case law, including “disturbance of social and family life”<sup>33</sup> these were within a *mix* of factors, with many of these **factors of declining applicability in the contemporary economy and society**.

## 2.3 Times have changed since penalty rates has their genesis

44. Industrial tribunals have also considered that **the quantum of penalty rates should not be set in stone**. In particular its was contemplated that the rates set would “*be subject to review from time to time with alterations of social, industrial and other relevant conditions*”.<sup>34</sup>
45. While higher wages remain relevant in regulating work beyond reasonable ordinary hours Australian society, the economy, consumer expectations and the way in which people spend their time has changed considerably over the past 100 years warranting a review of the level of some penalty rates, including Sunday penalty rates in the retail and hospitality sectors. For example:
- a. Sunday is only a day of religious observance for a minority of Australians, only half of those who attend church are employed and only a small minority of young Australians aged under 29 attend church.<sup>35</sup>
  - b. We are increasingly engaged in study. The proportion of people aged 18-34 years attending an educational institution almost doubled between 1976 and 2011.<sup>36</sup> In

<sup>27</sup> *Gas Employees case* [1919] 13 CAR 437 at 469.

<sup>28</sup> See *Weekend Penalty Rates Case* [1947] 58 CAR 610.

<sup>29</sup> *Tramway & Gas Employees Case* [1949] 62 CAR 558 at 564.

<sup>30</sup> *Gas Employees case* [1919] 13 CAR 437 at 469.

<sup>31</sup> *Engine Drivers General (State) Interim Award* [1950] AR (NSW) 260 at 267.

<sup>32</sup> *Engine Drivers General (State) Interim Award* [1950] AR (NSW) 260 at 267.

<sup>33</sup> *Engine Drivers General (State) Interim Award* [1950] AR (NSW) 260 at 267.

<sup>34</sup> *Engine Drivers General (State) Interim Award* [1950] AR (NSW) 260.

<sup>35</sup> Lewis P, ‘Paying the penalty? The high price of penalty rates in Australian restaurants’, *Agenda: A Journal of Policy Analysis and Reform*, Vol. 21, No. 1, 2014: 5-26 including analysis of the National Church Life Survey (NCLS 2010); ABS Yearbook of Statistics 2006, cat. No. 1301.0.

<sup>36</sup> ABS, Cat No. 4102.0 - Australian Social Trends, April 2013

May 2016 it was estimated that over 3 million (or 1 in 5 people aged 15 to 64 years) were enrolled in formal study and of these almost 2 million are aged 15-24 years.<sup>37</sup> Most students are enrolled full time.<sup>38</sup>

- c. There have been structural changes in our economy and growth in sectors that can provide students with access to work opportunities. Retail and hospitality employ the largest numbers of young people as they offer opportunities for entry level work at flexible times. The ABS has stated:

*Many students may need to work part-time in order to support themselves while studying, and the increased flexibility in the workplace has made it easier for them to do so.*

*...These differences may be a reflection of the changes in the labour market. For example, since the 1970s there has been a general fall in full-time job opportunities for young people. In addition there has been substantial growth in industries that offer part-time employment such as retail and hospitality services, while there has been a decline in industries that offer traditional full-time employment such as manufacturing...<sup>39</sup>*

- d. We now live in a global, digitally connected marketplace and Australian retailers are facing increasing competition from domestic and international internet-based retailers with lower operational costs and no restrictions on when they can trade compared with bricks and mortar retailers.
- e. As noted in the Competition Policy Review Final Report “*the take-up of online shopping clearly demonstrates that consumers are demanding more diversity in how and when they shop. In recent years, online retail sales have grown more quickly than spending at traditional bricks and mortar retailers*”.<sup>40</sup> These comments are consistent with the observations of Ben Franzi, Australia Post’s General Manager, eCommerce & International who said:

*Australian consumers’ expectations around convenience, value and choice have driven a higher proportion of the population to shop online more frequently. This is a world where people simply expect to access information, products and services, at the touch of a button.<sup>41</sup>*

Of note, Australia Post’s latest “Inside Australian Online Shopping”, eCommerce Industry Paper identifies that in 2016 Australians spent \$21.65 billion in online shopping and that growth in online spending significantly outperformed traditional retail spending.<sup>42</sup>

<sup>37</sup> ABS, Cat. No. 6227.0 - Education and Work, Australia, May 2016.

<sup>38</sup> ABS, Cat. No. 6227.0 - Education and Work, Australia, May 2016.

<sup>39</sup> Australian Bureau of Statistics, 2013, ‘Young adults: Then and now’, cat. no. 4102.0.

<sup>40</sup> The Australian Government Competition Policy Review, March 2015, p 163.

<sup>41</sup> Australia Post’s, *Inside Australian Online Shopping*, 2017 eCommerce Industry Paper, p. 3.

<sup>42</sup> Australia Post’s, *Inside Australian Online Shopping*, 2017 eCommerce Industry Paper



- f. Trading hours have been progressively deregulated since the time where penalty rates had their origins. This reflects the expectations of consumers that businesses in the retail and hospitality industries will be open to provide services seven days a week and during evening hours.
46. The National Retail Association set out a concise summary of the deregulation of trading hours and the principles underpinning the case for deregulation during the two yearly review of modern awards:

*Trading hours have been deregulated in NSW since 1990, in Victoria since 1996, in Tasmania since 2002, and in the ACT and the NT for longer periods. Seven day trading is the 'norm' for the great majority of Queensland locations, is the 'norm' in all regional centres and the Adelaide CBD in SA, in many areas of WA including Perth from August this year.*

*Seven day trading for retail is now overwhelmingly the 'norm' in all jurisdictions...*

*It is important that Fair Work Australia make determinations which are cognizant of the evolution of trading hours reform across Australia and in the context that in many instances State retail instruments reflected trading patterns which were no longer contemporary...*

*The shift to seven day trading in the retail sector has occurred because of a range of considerations:*

- *To achieve a more efficient utilisation of capital in the retail sector and to stimulate investment in the retail sector.*
- *To ensure the long term economic well being of the retail sector.*
- *To more effectively cater for the changing needs, preferences, and shopping patterns of consumers. Customers are the lifeblood of retailing and the retail industry must be able to respond to customer preferences about when, and where, they want to go shopping. It is the preference of the majority of consumers to have the freedom to shop on Sundays. Sunday is a time when many customers have more time to shop at their leisure, particularly for non-food items, and it makes little economic sense to prohibit retailers from taking advantage of this obvious desire of consumers more effectively compete with the 24/7 characteristics of internet shopping and the rapid take up by consumers of internet shopping.*
- *To stimulate economic growth and improve profitability.*
- *To support growth in our tourism industry.*

- *A vibrant, competitive and flexible retail industry will maximise total long term employment opportunities both directly in the industry and indirectly in support of retail businesses.*<sup>43</sup>

47. These sentiments are echoed in the Competition Policy Report which observed that:

*State and territory governments have deregulated retail trading hours to varying degrees over recent years. This has generally widened choices for consumers. Yet consumers continue to seek greater diversity in how and when they shop, as seen in the rapid take-up of online shopping.*

*The growing use of the internet for retail purchases is undermining the original intent of restrictions on retail trading hours. When consumers can switch to online suppliers outside regulated trading hours, restrictions on retail trading hours merely serve to disadvantage ‘bricks and mortar’ retailers relative to their online competitors...<sup>44</sup>*

48. The Panel formed the view that that full deregulation of retail trading hours is overdue, and that remaining restrictions should be removed as soon as possible.<sup>45</sup> However the penalty rates structures of a number of awards will hamper such reform agendas in industries where trading outside of the 9am-5pm Monday to Friday pattern is a feature. Excessive penalty rates that hamper employment, service levels or see businesses close their doors have negative consequences for the economy and its participants.

## 2.4 The Fair Work Commission decision was right on penalty rates

49. The Fair Work Commission’s February 2017 decision ([2017] FWCFB 1001) delivered modest yet important reductions in excessive penalty rates in retail and hospitality sectors. While employer parties did not get everything they sought, the decision makes some progress toward helping Australian businesses open their doors and offer more work opportunities with the Fair Work Commission recognising that a number of penalty rates within awards were not meeting the modern awards objective. In particular the Fair Work Commission found that the modern awards varied by the decision **were not providing a fair nor relevant safety net.**

50. During the penalty rates case, retail and hospitality sector representatives brought evidence that:

- a. Businesses adjust staffing and opening hours on weekends and public holidays due to high wage costs. Some don’t trade at all because of the cost of doing so and many small business operators that do trade end up working the hours themselves.

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<sup>43</sup> National Retail Association submission to Fair Work Australia in relation to the Fast Food Industry Award 2010, 13 August 2012, p 4-6.

<sup>44</sup> The Australian Government Competition Policy Review, Final Report. March 2015, p 46.

<sup>45</sup> The Australian Government Competition Policy Review, Final Report. March 2015, p 47.

Increased wage costs associated with weekends and public holidays can therefore lead to reduction in employment opportunity.

- b. A reduction in penalty rates would result in increased hours and flexible work opportunities to enable people to better balance work and other commitments such as study, secondary or self-employment and/or caring responsibilities.
- c. Customers, including weekend workers, shop, dine and socialise at retail and hospitality venues on the weekend and enjoy doing so. Customers demand the flexibility of trading hours without higher costs. **Being able to operate at times that customers expect businesses to trade and with adequate staffing levels will improve consumer experience.**
- d. The majority of weekend workers have no problem working on weekends, particularly young people who find weekend work desirable. This is understandable given growth in participation in education.
- e. Suppliers to these industries would also benefit from increased weekend and public holiday trades so the impact of a rate reduction would have positive flow on effects for other sectors.
- f. Growth in public holidays was problematic. PriceWaterhouse Coopers conducted an economic analysis of the cost to the State of Victoria in introducing two new public holidays (including grand-final eve day as an election promise). This analysis found that the economic cost of lost production of the creation of two new public holidays would be between \$717M to \$898M far outweighing the economic benefits estimated at between \$156M to \$312M. Further, it found that some 65,800 and 80,400 fewer casual employees would be rostered to work.<sup>46</sup>
- g. There are high levels of small business representation in these industries.
- h. The retail and hospitality industries are a key source of employment for those first entering or returning to the workforce. These cohorts will benefit from enhancing the capacity of the industry to maximise the hours of work it can offer to employees.
- i. It is unprofitable for some retail and hospitality businesses to trade on public holidays and Sundays.
- j. More reasonable rates will enable business to offer more work to employees; allow owners, managers and salaried staff to work less on Sundays and public holidays; enable business to grow and enhance their service offering and offer more to patrons and their local community.

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<sup>46</sup> Price Waterhouse Coopers for the Department of Economic Development, Jobs, Transport and Resources, *Regulatory Impact Statement on proposed new public holidays in Victoria*, July 2015, Appendix 2.



51. In its 23 February 2017 decision the Fair Work Commission accepted evidence demonstrating that the current level of penalty rates has led employers to reduce labour costs associated with Sunday and public holiday trading by imposing a number of operational limitations, such as:
- Restricting trading hours;
  - Lowering staff levels; and
  - Restrictions on the type and range of services provided.
52. The Fair Work Commission also accepted that the evidence that a reduction in penalty rates is likely to lead to:
- Increased trading hours on Sundays and public holidays;
  - A reduction in the hours worked by some owner operations;
  - An increase in the level and range of services offered on Sundays and public holidays; and
  - An increase in overall hours worked.
53. The Fair Work Commission awarded modest reductions in four hospitality and retail modern awards which are to be phased in over as many as four annual wage review cycles as set out in Attachment A.
54. Employer parties did not get all the relief they sought. For example, casuals employed under the hospitality industry award on a Sunday (e.g. casual waiters, bar attendants) will not have their Sunday penalty rates changed by the decision.
55. However the decision makes some progress in helping some Australian businesses in the retail and hospitality sectors that are doing it tough. A recent survey conducted by point of sale services provider Impos of almost 600 businesses in the hospitality industry (a large majority of which were SMEs) saw 71 per cent of respondents identifying penalty rates as their biggest regulatory challenge despite the recent decision.<sup>47</sup>
56. The decision does not remove penalty rates altogether and nor does it reduce rates to the same level of Saturday in most awards. Some of the claims made about the impact on individuals are overstated and factually incorrect. These include claims that the reductions will apply to 700,000 workers. Independent analysis of these claims by Cassells with reference to the Household Income and Labour Dynamics in Australia Survey (HILDA Survey) suggests that there would be fewer than 220,000 people directly impacted.<sup>48</sup> It was

<sup>47</sup> As reported by Paul Gilder for the Herald Sun, 12 May 2017, accessed 19 July 2017. <http://www.heraldsun.com.au/business/hospitality-sector-sees-growth-despite-concern-on-penalty-rates-research-shows/news-story/947ad8f337ff255ae63451d7089c17d5>. See also Laura Buyers "Food for Thought: Our Hospitality Survey Results Revealed" accessed from [Impos website](#), 19 July 2017.

<sup>48</sup> Joshua Healy and Rebecca Cassells in The Conversation, "FactCheck: will 700,000 workers be 'ripped off' by penalty rate cuts, as Bill Shorten said?", 25 May 2017, accessed 19 July 2017.

also noted that the HILDA Survey is able to provide more accurate estimates of people that satisfy all three conditions of working in retail or accommodation and food services, being paid under an award and working on a Sunday.<sup>49</sup>

57. A recent ABC/RMIT University “fact check” also found that:

- 700,000 people did not get a pay cut on 1 July 2017 as some have claimed and it critiqued the estimate prepared by the McKell Institute on the basis that:
  - Did not take into account many people do or can work on a Sunday;
  - Wrongly took into account people who work for an employer that never works on a Sunday;
  - Did not factor in that not all award workers in the hospitality industry will see a reduction in Sunday penalty rates noting there is no change to Sunday rates for any worker on the Restaurant Industry Award or casuals on the Hospitality Industry (General) Award;
  - Did not take into account that some employers may choose to pay above the award.<sup>50</sup>

58. In some cases the decision will have the effect of returning Sunday rates to the level they were in the state-based industry awards before the modern awards came into effect. In particular, in the retail industry in New South Wales Sunday penalty rates for retail award employees rose from 150% to 200% between 2010 and 2014. This is of note given retail trade, our largest employer of young people, has recently recorded the largest decline in employment across all industries. While there are a complex range of factors contributing to this, excessive penalty rates have not helped.

59. The unique characteristics of the industries impacted were also acknowledged by the Fair Work Commission. In particular, the Fair Work Commission identified that the businesses impacted by the decision include small and medium businesses with lower profit margins, many with higher wages and salaries as a proportion of total expenses, lower survival rates, facing strong or intense competition and many that are operating weekends.

60. On any assessment the case was a large one involving 10 expert witnesses, 133 lay witnesses and 39 days of hearing giving rise to 28,606 paragraphs of transcript. It also had some distinctive features. Proceedings were opened up to public submissions and the Opposition and some state governments made submissions. The decision is lengthy, delivered over 12 Chapters within 551 pages. It was not a decision that was arrived at lightly.

<sup>49</sup> Joshua Healy and Rebecca Cassells in The Conversation, “FactCheck: will 700,000 workers be ‘ripped off’ by penalty rate cuts, as Bill Shorten said?”, 25 May 2017, accessed 19 July 2017.

<sup>50</sup> ABC “Fact Check: Have 700,000 of the poorest-paid people received an effective pay cut?”, 24 July 2017  
<http://www.abc.net.au/news/factcheck/2017-07-24/fact-check-have-700000-of-the-poorest-workers-received-pay-cut/8694966>



61. Protracted arrangements for the implementation of the changes mean that the impact of this decision will not be realised straight away. In fact, under the first year of phasing most award-reliant employees will still see an increase in their Sunday penalty rates and, combined with a significant above inflation pay increase of 3.3 per cent, will see an increase in their wages more generally (see Attachment B). Nevertheless, over the medium-long term the changes made by the decision are likely to play an effective role in helping small, award reliant businesses to mitigate the impacts of excessive wage costs that culminate with each annual wage increase. This modest relief can only be delivered if the decision is permitted to stand.

### 3 Operation, application and effectiveness of the BOOT [TOR (b)]

62. The second Term of Reference asks the Committee to examine:

*the operation, application and effectiveness of the Better Off Overall Test (BOOT) for enterprise agreements made under the Fair Work Act 2009.*

63. The current operation of the Better off Overall Test (BOOT) is an issue of key concern for employers who have difficulty assessing with certainty whether a particular agreement satisfies its requirements. The Productivity Commission acknowledged that the BOOT's application "discourages enterprise bargaining and creates uncertainty during the agreement approval process" and recommended its replacement with a no-disadvantage test (NDT).<sup>51</sup>

64. In particular, the Productivity Commission identified the following problems with the BOOT compared with predecessor no-disadvantage tests:

- a. *The scope for tradeoffs that assure the BOOT is passed is limited in enterprise agreements that involve employees who are predominantly on the award. This restricts the desirable uptake of enterprise agreements.*
- b. *The BOOT requires the FWC to be positively satisfied that an agreement will make all employees better off than the relevant award. This provides a wider scope for the FWC to reject agreements at the approval stage when compared with a NDT, because it changes the onus of proof.*<sup>52</sup>

65. The Productivity Commission also observed that there was ambiguity as to whether the test applied to every single individual in an agreement or to a class of employees. At the time of the report it stated that "[i]n practice, the FWC has typically used the BOOT in relation to a given class of employees, but there remains a risk that a single employee's complaint might sink an agreement. Statutory change to ensure that the test be for a class of employees would address this problem".<sup>53</sup>

66. Since the time of drafting the Productivity Commission's concerns about a single employee's complaint sinking an entire enterprise agreement have been realised. A Full Bench decision<sup>54</sup> saw the rejection of an agreement that was approved by an overwhelming majority of the 78,000 employees who would have been covered by it on the basis of an appeal by a part-time employee and another union bargaining representative. It is possible for a single employee or small group of employees to stand in the way of agreements

<sup>51</sup> Productivity Commission, *Workplace Relations Framework*, 2015, p. 645.

<sup>52</sup> Productivity Commission, *Workplace Relations Framework - Overview*, 2015, p. 35.

<sup>53</sup> Productivity Commission, *Workplace Relations Framework - Overview*, 2015, p. 35.

<sup>54</sup> *Hart v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Ltd* [2016] FWCFB 2887 (31 May 2016)



against the wishes of the vast majority of employees in a large workplace who attach a higher value to the entitlements in the agreement when compared to the award.

67. However of concern and contrary to the recommendations of the Productivity Commission, policy proposals have now emerged that would seek to further entrench monetary entitlements in awards by prohibiting the capacity to vary them through properly negotiated trade-offs.
68. Aside from having the practical effect of discouraging bargaining, policies that seek to entrench award conditions make the assumption that these conditions are of greater value to employees relative to other benefits that agreements can deliver and represent a step toward recentralisation of wage fixation. This is placing at risk the productivity dividends that agreements were intended to deliver as is explored further in this submission. Also of note, the Explanatory Memorandum to the *Fair Work Bill 2008* did contemplate that non-monetary benefits could be applied in an assessment of whether employee is better off overall and this recognises that some people may value access to flexibility over a higher rate of pay.
69. Agreement making was always intended to involve a process of negotiated trade-offs and was never intended to be a process via which award conditions are set in stone and solely built upon, condition by condition; this is simply not how collective bargaining works. Enterprise agreements should, in the Australian Chamber's submission, link wages and wage increases to business conditions, productivity, performance and the circumstances of employees at the enterprise. This logically necessitates a fall in the proportion of employees with their pay and conditions being set directly by awards.
70. The Fair Work Act was intended to achieve productivity and fairness through an emphasis on enterprise-level collective bargaining and encouraging collective bargaining, as reflected in its general objects and modern awards objective. Unfortunately, data on award reliance shows the opposite trend. Contrary to the aims of our system, and the role of awards and minimum wages, there has been a substantial and sustained increase in award reliance post-commencement of the Fair Work Act.



### Award reliance

	2008	2010	2012	2014	2016
All industries	16.5	15.2	16.1	18.8	24.5
Accommodation and food services	50.3	45.2	44.8	42.8	42.7
Administrative and support services	33.9	31.4	29	37.3	42.1
Retail trade	28.9	22.3	25.6	28.5	34.5
Health care and social assistance	17.2	17.1	19	22.3	28.8
Rental, hiring and real estate services	20.2	22.8	20.9	22.1	27.2
Arts and recreation services	14.2	15.1	19.7	22	26.2
Education and training	8.4	5.1	6.8	5.1	26
Construction	9.1	10	10.6	13.7	19.7
Public administration and safety	3.6	1.9	6.9	12.8	18.1
Manufacturing	12.2	14.6	11.3	15.7	17.7
Wholesale trade	9	10.9	8.1	11.9	16.8
Transport, postal and warehousing	8.3	8	7.3	10.9	13.4
Professional, scientific and technical services	5.4	4.2	6	9.9	9.3
Electricity, gas, water and waste services	5.4	3.1	4.3	6.9	6.5
Information media and telecommunications	5.6	5.7	5.7	5.2	5.5
Mining	1.2	1.9	0.6	0.8	n/a
Financial and insurance services	2.2	2.1	4.7	5	n/a
Other services	25.4	27.2	24.6	25.1	34.3

Source FWC Annual Wage Review *Statistical Report – Annual Wage Review 2016-17, Table 7.1, p.30*

### 3.1 Flaws in the bargaining system create disincentives to bargain

71. The Australian Chamber does not consider it a coincidence that enterprise bargaining commenced its decline under the Fair Work Act. There are a number of fundamental flaws within the Fair Work Act that provide disincentives to bargain including the complex enterprise bargaining architecture that will typically require legal / expert representation, which can be cost prohibitive for smaller businesses. This bargaining framework gives rise to a myriad of procedural landmines or points of potential error, at which enterprise bargaining can go wrong and agreements can be sunk despite the best will and advice. The impractical application of BOOT is among these landmines, creating a danger of agreements being overturned even where a majority of employees have voted in favour of it.
72. Employers are very mindful of the difficulties of passing the BOOT test as it is being applied and in navigating the bargaining framework more generally. Employers make cost benefit assessments as to whether there is any value in pursuing an enterprise agreement. For many, the promised rewards of predictable forward labour costs may be outweighed by the complications and risks of bargaining under the Fair Work Act.
73. Where agreement making is under consideration, the level of the wage floor (including penalty rates) also impacts employers' assessments of whether bargaining is worth

pursuing. Preserving excessive penalty rates cannot arrest the slide in bargaining and risks making it worse.

74. It must not be lost in this debate that the current level of the safety net, including a national minimum wage that is the second highest in the developed world, overlaid by complex award conditions, exists as a costly foundation for bargaining during a time of subdued productivity and at the very least, cannot be said to be encouraging collective bargaining.

### 3.2 The system locks in arrangements poorly suited to the businesses covered by them

75. The consequence of the decline in bargaining is that we are seeing an increasing number of Australian businesses and their employees bound to industrial arrangements that are poorly suited to their circumstances. A study commissioned by the Fair Work Commission to elicit insights from small businesses, that are end-users of the awards, showed:
- a. the 'layout of modern awards elicited negative sentiment and was considered daunting';<sup>55</sup>
  - b. the awards 'were seen as difficult to use, but in-line with their low expectations of a government, regulatory/policy document, i.e. complex and challenging';<sup>56</sup>
  - c. the awards were considered to be 'convoluted', 'complex', 'ambiguous', 'of questionable relevance' and written for the benefit of 'bureaucrats and lawyers';<sup>57</sup> and
  - d. there is little confidence in the modern awards and the 'lack of certainty was disempowering for small business owners in the study'.<sup>58</sup>
76. The small businesses participating in the study reported working in a constantly changing business world characterised by "[i]ncreasing demands of customers, a more aggressively competitive market, increased burden of administration, the constant change of regulation and a more assertive workforce".<sup>59</sup> The small businesses highlighted their time challenges and need to minimise negative productivity impacts in their efforts to compete and remain profitable in a demanding, competitive and uncertain environment and the complexity of the awards against this backdrop creates apprehension.
77. To manage this apprehension, most participants reported simply paying a little above modern award pay rates as a form of insurance, so they didn't get caught out.<sup>60</sup> Some participants were changing their employment practises in order to avoid dealing with the modern awards, i.e. not hiring or moving toward contract labour.<sup>61</sup> This is a highly

<sup>55</sup> Sweeney Research for the Fair Work Commission, *A Qualitative Research Report on: citizen co-design with small business owners*, August 2014, p. 5.

<sup>56</sup> Sweeney Research for the Fair Work Commission, *A Qualitative Research Report on: citizen co-design with small business owners*, August 2014, p. 5.

<sup>57</sup> Sweeney Research for the Fair Work Commission, *A Qualitative Research Report on: citizen co-design with small business owners*, August 2014, p. 6.

<sup>58</sup> Sweeney Research for the Fair Work Commission, *A Qualitative Research Report on: citizen co-design with small business owners*, August 2014, p. 6.

<sup>59</sup> Sweeney Research for the Fair Work Commission, *A Qualitative Research Report on: citizen co-design with small business owners*, August 2014, p. 6.

<sup>60</sup> Sweeney Research for the Fair Work Commission, *A Qualitative Research Report on: citizen co-design with small business owners*, August 2014, p. 7.

<sup>61</sup> Sweeney Research for the Fair Work Commission, *A Qualitative Research Report on: citizen co-design with small business owners*, August 2014, p. 12.



undesirable outcome yet instead of providing relief for these small businesses policy proposals are emerging that will only make it harder.

### 3.3 Address the problems in bargaining – don't make it harder

78. Instead of seeking to entrench award conditions, policy makers should instead be exploring ways to make bargaining more accessible to a broader range of businesses, including small businesses. A starting point would be evaluating the findings of the Productivity Commission that acknowledge the challenges small businesses face in bargaining and which identified the problematic operation of the BOOT.
79. The Australian Chamber supports the principle of reintroducing a global no-disadvantage test. The 'global' no-disadvantage test that applied in the *Workplace Relations Act 1996* (Cth)(WR Act) which applied from 1996-2006 provided that an agreement would pass this test if its approval would not result, on balance, in a reduction of the overall terms and conditions of employment under the relevant award and state and federal laws and provides a useful benchmark for the design of such as test.

To avoid any confusion, this is support for the *pre-Work Choices* version of the No Disadvantage Test, which led to the successful adoption of thousands of agreements covering millions of Australians over more than a decade.

80. While applying to collective bargaining in practice the BOOT is not being applied as "collective test" in circumstances where it has been interpreted as requiring each and every employee (or prospective employee) under the agreement to be better off. The Productivity Commission has also noted that while there is scope in an enterprise agreement to trade off particular benefits of a modern award against other benefits that are valued more highly by employees, this requires that all employees covered by the agreement be better off overall. This is a challenge in in the context of a framework where individual workers can place in jeopardy the benefits under agreements that the majority of employees would otherwise enjoy.
81. The Australian Chamber does not aspire to see any Australian being paid unfairly or for Australia to be a low wage economy. In fact, Australian Chamber policies consistently promote increased wages and improved living conditions via measures that will grow Australia's national prosperity and jobs. An environment where wages and conditions are set by effective, accessible, balanced and practical workplace bargaining can help achieve this.
82. However bargaining should not be layered with prescription. It should instead be focussed on delivering wages and conditions linked to productivity, industry and regional conditions as well as employee and employer circumstances and priorities at the enterprise concerned. This is necessary for Australia to remain competitive. Regrettably the World Economic Forum recently identified Australia's "restrictive labor regulations" as being the



most problematic factor for doing business in Australia<sup>62</sup> and flexibility of wage determination was ranked a at dismal 111<sup>th</sup> place out of 138 countries surveyed reflecting the recentralisation of wage determination.<sup>63</sup> Policy and legislative proposals under consideration such as the *Fair Work Amendment (Pay Protection) Bill 2017* will only worsen what is already a very concerning situation with the competitiveness and effectiveness of how we regulate employment in Australia.

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<sup>62</sup> World Economic Forum, Global Competitiveness Report 2016-17, p 102.

<sup>63</sup> World Economic Forum, Global Competitiveness Report 2016-17, p 103.

## 4 Stopping enterprise agreements from changing penalty rates [TOR (c)] and the Fair Work Amendment (Pay Protection) Bill 2017 [TOR (d)]

83. The third term of Reference asks the Committee to examine:

*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.*

84. This tasks the Committee with evaluating a prohibition on enterprise agreements containing terms for remuneration on weekends, public holidays, evenings etc that are lower than comparable award terms for the same work, apparently regardless of what other benefits are inherent in the agreement.

85. There is utility in addressing this term of reference collectively with the fourth term of reference which asks the Committee to examine the provisions of the *Fair Work Amendment (Pay Protection) Bill 2017*, which has a similar effect but which extends to monetary entitlements under an agreement generally. In particular, Item 6 of *Fair Work Amendment (Pay Protection) Bill 2017* would require that a base rate of pay payable to an employee under an enterprise agreement not be less than the 'full rate of pay' instead of the 'base rate of pay', with 'full rate of pay' defined at section 18 of the Fair Work Act to include:

- a. incentive-based payments and bonuses;
- b. loadings;
- c. monetary allowances;
- d. overtime or penalty rates; and
- e. any other separately identifiable amounts.

86. These approaches would result in a line-by-line comparison of the agreement against the award with the practical implication that an agreement could not differ from awards on matters such as penalty rates, regardless of whether the agreement as a whole would leave most employees better off. So for example, an agreement could not increase total remuneration by \$100 per week compared to an award, if it were to leave an employee \$40 per week worse in regard to hours attracting penalty rates, notwithstanding that the employee would be a net \$60 better off overall.

87. They would have the practical effect of requiring an employer to entrench award conditions in bargaining, constraining innovative approaches to bargaining and preventing employees

from enjoying monetary and non-monetary benefits of value to them in exchange for award conditions that may be of lesser relevance and value to them.

88. It would also be at odds with the lived experience of bargaining and exchanges that have seen millions of working Australians often with the support of unions, assess and make their own judgements on whether they would be better or worse off from a proposed package of terms and conditions of employment, with the protection of tightly regulated voting and statutory tests guarding against overall disadvantage.

#### **4.1 Bargaining is already subject to detailed and complex checks and balances**

89. In considering the third and fourth terms of reference, is important to understand that there is already a complex and prescriptive legislative framework that has put in place comprehensive safeguards around agreement approval. This consideration is also applicable to the first term of reference which asks the Committee to examine “*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.*”
90. In order for the Commission to approve an agreement it must be satisfied that:
- a. The agreement has been genuinely agreed by the employees covered by the agreement (excepting greenfields agreements where there are no employees);<sup>64</sup>
  - b. The group of employees to be covered by the agreement was fairly chosen;<sup>65</sup>
  - c. The employees under the agreement are better off overall compared with the award;<sup>66</sup>
  - d. The terms of the agreement do not contravene the National Employment Standards;<sup>67</sup>
  - e. The agreement specifies a nominal expiry date;<sup>68</sup>
  - f. The agreement contains a dispute settlement term;<sup>69</sup>
  - g. The agreement does not contain any unlawful terms;<sup>70</sup>
  - h. The agreement does not include any designated outworker terms;<sup>71</sup>

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<sup>64</sup> *Fair Work Act 2009* (Cth), s 186(2)(a).

<sup>65</sup> *Fair Work Act 2009* (Cth), s 186(3).

<sup>66</sup> *Fair Work Act 2009* (Cth), s 186(2)(d).

<sup>67</sup> *Fair Work Act 2009* (Cth), s 186(2)(c).

<sup>68</sup> *Fair Work Act 2009* (Cth), s 186(5).

<sup>69</sup> *Fair Work Act 2009* (Cth), s 186(6).

<sup>70</sup> *Fair Work Act 2009* (Cth), s 186(4).

- i. The agreement meets additional requirements with respect to particular kinds of employees (shiftworkers, pieceworkers, school based apprentices and school based trainees and outworkers);<sup>72</sup>
  - j. Where a scope order is in operation, that approval is not inconsistent with good faith bargaining;<sup>73</sup>
  - k. Where the agreement is a multi-enterprise agreement:
    - i. The agreement has been genuinely agreed to by each employer covered by the agreement, and that no person coerced, or threatened to coerce, any of the employers to make the agreement;<sup>74</sup>
    - ii. If the agreement was not approved by the employees of all of the employers proposed to be covered — then the agreement has been varied so that it only covers those employers whose employees approved the agreement;<sup>75</sup>
  - l. Where the agreement is a greenfields agreement:
    - i. The relevant unions that will be covered by the agreement are (taken as a group) entitled to represent the industrial interests of a majority of the employees who will be covered by the agreement, in relation to work to be performed under the agreement;<sup>76</sup>
    - ii. It is in the public interest to approve the agreement.<sup>77</sup>
91. The system is not a system that is “easy to get around” as the first term of reference may be perceived as inferring. Aside from the problematic nature of the BOOT, one of the questions this Committee should consider exploring is how an agreement that enjoys the support of both the employer and the employees at the enterprise can be knocked back at the approval stage on the basis of a finding that the agreement is not “genuinely agreed”. Outcomes such as this arise due to the impractically strict approach to the very technical and complicated paper work requirements of the Fair Work Act.

## 4.2 Pursue reforms that repair bargaining and productivity

92. The unforgiving procedures for providing employees with the Notice of Employee Representational Rights (NERR) remains a key issue for employers. In Chapter 20 of its Final Report,<sup>78</sup> under the heading ‘Make procedure a servant, not the king’ the Productivity Commission recounts various examples of the Fair Work Commission’s application of the bargaining provisions of the Fair Work Act elevating procedure above substance.

<sup>71</sup> *Fair Work Act 2009* (Cth), s 186(4A).

<sup>72</sup> *Fair Work Act 2009* (Cth), s 187(4).

<sup>73</sup> *Fair Work Act 2009* (Cth), s 187(2).

<sup>74</sup> *Fair Work Act 2009* (Cth), s 186(2)(b).

<sup>75</sup> *Fair Work Act 2009* (Cth), s 187(3).

<sup>76</sup> *Fair Work Act 2009* (Cth), s 187(5)(a).

<sup>77</sup> *Fair Work Act 2009* (Cth), s 187(5)(b).

<sup>78</sup> Productivity Commission (2015) *Workplace Relations Framework*, Volume 2, pp.663-667

93. The decision in *Uniline*<sup>79</sup> highlighted the unduly strict and exacting approach the Fair Work Commission found it must apply in approving enterprise agreements. The Fair Work Commission read the NERR requirements to prohibit distribution of the NERR after the 14 day period from the commencement of bargaining. Non-compliance with this requirement also means that the agreement has not been genuinely agreed, which means that, where the NERR has been given to employees outside the 14 day period, the parties must formally cease bargaining, formally commence (a new round of) bargaining, and in the case of a completed agreement, re-vote and re-lodge the same agreement to the Fair Work Commission to have it approved. This is a highly inefficient outcome arising from a minor procedural oversight.
94. In the more recent matter of *Shop, Distributive & Allied Employees Association v ALDI Foods Pty Ltd* ([2016] FCAFC 161) the Federal Court considered circumstances where ALDI's NERR identified the employer's representative who should be approached should the employee have any questions about the agreement, rather than providing the employer's name. In the Court's view this most likely would have meant that the agreement was not genuinely agreed to. The Court's observation has subsequently been followed by the Fair Work Commission.
95. The Productivity Commission recounted evidence from employers in Launceston whose enterprise agreement was rejected by the Fair Work Commission due to a technical defect in their NERR:
- We are now forced to go back to the ballot again. Whilst I understand and respect the legalities imposed by legislation, the pedantic nature in which the provisions are applied has a significant impact on the productivity of the organisation for no apparent reason or protection of the employees from any wrongdoing.*
- The situation has now caused a potentially detrimental relationship between the organisation and the workforce. Because it has been on a knife-edge before, so to speak, they do not understand the reasons for the rejection. Rather, they are becoming suspicious that they must have done something wrong because the Fair Work Commission rejected the agreement.*<sup>80</sup>
96. The Productivity Commission identified further grounds for avoiding rejection of fundamentally-sound enterprise agreements on the basis of technical purity:
- a. Delays in agreement approval, delay benefits for employees.
  - b. Such decisions can influence perceptions of the cost and complexity of bargaining, and thus discourage businesses and employees from pursuing enterprise agreements.

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<sup>79</sup> [2016] FWCFB 4969.

<sup>80</sup> Productivity Commission (2015) *Workplace Relations Framework*, Volume 2, p.663.



- c. Delays in agreement approval create uncertainty about future labour costs, and can affect a business' capacity to self-finance or raise the cost of external finance.
- d. Delaying agreements delays benefits to consumers / the community.<sup>81</sup>
97. The Productivity Commission recommended that:
- The Australian Government should amend the Fair Work Act 2009 (Cth) to:*
- a. *allow the Fair Work Commission wider discretion to overlook minor procedural or technical errors when approving an agreement, as long as it is satisfied that the employees were not likely to have been placed at a disadvantage because of an unmet procedural requirement;*
- b. *extend the scope of this discretion to include minor errors or defects relating to the issuing or content of a notice of employee representational rights.*<sup>82</sup>
98. This recommendation would be implemented by the *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures Bill) 2017* that remains before the Parliament. Proposed new section 188(2) would fix one of the serious problems plaguing agreement making under the Fair Work Act, allowing the Fair Work Commission discretion to progress agreements. The Australian Chamber strongly supports the Bill's passage, and asks Senators to look again at progressing this important change.
99. In the Australian Chamber's submission Parliament should be acting on the Productivity Commission's recommendations to fix problems in the Fair Work Act that are making enterprise bargaining more difficult. As observed by the Fair Work Commission in its report '*Productivity and innovation in enterprise agreement clauses: an overview of literature, data and case studies at the workplace level*' the need to improve Australia's productivity performance is widely acknowledged.<sup>83</sup>
100. Politically driven resistance to sensible policy changes aimed at addressing impediments in the workplace relations framework that detract from improved productivity outcomes cannot continue. It is time for a rational discussion regarding the work systems and conditions required to support optimal productivity growth as this directly impacts national prosperity and living standards.
101. The need for Australia's policy settings to support productivity growth is essential if we are to remain a G20 nation and improve the competitiveness of the national economy. The World Economic Forum has acknowledged that:
- ...policymakers as well as business and civil society leaders must work together in order to ensure robust economic growth that supports more inclusive economies.*

<sup>81</sup> Productivity Commission (2015) *Workplace Relations Framework*, Volume 2, p.664

<sup>82</sup> Productivity Commission (2015) *Workplace Relations Framework*, Volume 2, p 667 – see recommendations 20.1.

<sup>83</sup> *Productivity and innovation in enterprise agreement clauses: an overview of literature, data and case studies at the workplace level*, Fair Work Commission, 2014, page 1.

*Economic and social agendas must go hand in hand and focus on reforms that will render economies more productive and open up new and better job opportunities for all segments of the population.<sup>84</sup>*

102. Of note, the Explanatory Memorandum to the *Fair Work Bill 2008* made a number of representations about ‘promoting productivity’, as reflected in the following statements:

- a. *The Fair Work Bill 2008 (the Bill) creates a national workplace relations system that is fair to working people, flexible for business and promotes productivity and economic growth.*
- b. *It promotes productivity and fairness through enterprise agreements that are tailored to suit the needs of businesses and the needs of employee, including by... enabling FWA to facilitate good faith bargaining...*
- c. *The new workplace relations system will be built on...an enterprise-level collective bargaining system focussed on promoting productivity.*
- d. *The new system is designed to provide a fair and simple framework for employees and employers to determine their arrangements in a way that encourages productivity at the enterprise level.*
- e. *Enterprise agreements can ensure that increases in pay and entitlements are linked to productivity increases at the enterprise. This is due to negotiations at the level of the enterprise. Furthermore, collective bargaining will shift the focus of negotiations towards boosting productivity.*
- f. *Collective bargaining under the Bill will be less bound by regulation and red tape and is designed to have a positive impact on labour productivity.*

103. The Explanatory Memorandum to the *Fair Work Bill 2008* had expressed the desire for the bargaining framework to operate in a way that improves productivity, with the following statements set out at paragraphs 186 – 190 of the regulatory analysis, advancing a business case for enterprise bargaining in pursuit of productivity:

*Collective bargaining at the level of the enterprise is a productive form of agreement making that allows employer and employees to examine the way they work, discover new ways to improve productivity and efficiency and communicate to make workplaces more flexible. Research by the Melbourne Institute and Productivity Commission links productivity gains to collective bargaining.*

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<sup>84</sup> *The Global Competitiveness Report 2014-2015*, World Economic Forum, page xiii.

*Furthermore, Tseng and Wooden found that **firms with employees on collective agreements experienced a 9 per cent increase in productivity levels, when compared to firms with employees on awards...** (emphasis added)*

104. As explored further in this submission, the general objects of the Fair Work Act as set out in section 3 include provision of “a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians” through, among other things “achieving productivity and fairness through an emphasis on enterprise-level collective bargaining”. The Fair Work Act’s objects relating to agreement making as contained in Part 2-4 also seek to underpin “collective bargaining in good faith, particularly at the enterprise level for enterprise agreements that deliver productivity benefits”.<sup>85</sup>
105. Yet despite these references to productivity within the Fair Work Act’s objects and the Explanatory Memorandum, aspects of the current framework are currently acting as barriers to productivity improvement and measures that would further restrict bargaining will only exacerbate this.

#### **4.3 Consequences of making award conditions “un-bargainable”**

106. Enterprise bargaining has been a key feature of Australia’s workplace relations system since the reforms introduced by the Keating Government in the 1990s, which gave rise to a necessary shift in workplace relations policy. The Australian Chamber recently made submissions to the Senate Education and Employment Legislation Committee in relation to its inquiry into the *Fair Work Amendment (Pay Protection) Bill 2017* which traversed the history and objects of enterprise bargaining in Australia.
107. The system of workplace relations in Australia that developed throughout the 20th century was characterised by institutionalised minimum standard setting, compulsory conciliation and arbitration and considerable third party influence and intervention in the form of industrial tribunals, courts and industrial organisations. This was a very different trajectory from that of Australia’s fellow developed economies, save for New Zealand.
108. However a necessary and quite fundamental set of reforms commenced in the 1980s when policy makers began to recognise that the global economy, greater mobility of capital and labour and increasing competition demanded a shift away from the centrally controlled industrial relations framework if we were to maintain high standards of living. The focus shifted toward the creation of a system where decisions about wages and conditions of employment could be increasingly made in the workplace where the mutual interests of employers and employees would be paramount, and awards would play a safety net or protective role, underpinning a system with bargaining and agreements at its core.
109. Quite fundamental to this was the reform of tariffs and Australia’s commitments to freer trade. Without artificial trade, financial and currency controls, the previous highly

<sup>85</sup> *Fair Work Act (2009)* (Cth), s 171(b) and 576(1)(c).

centralised approach to regulating work had started to harm Australia, and it had started to fail with wage breakouts.

110. There was a growing recognition by policy makers of the importance of ensuring greater international competitiveness, and that linking wages and improvements in conditions of employment to increases in workplace productivity through enterprise bargaining was the tool for achieving this.
111. Enterprise bargaining at the federal level derives its genesis from the *Industrial Relations Act 1988* via recognition of consent awards and certified agreements. The Keating Government's passage of the *Industrial Relations Legislation Amendment Act 1992* served to further facilitate enterprise level certified agreements made by unions and employers.
112. This was followed by the Keating Government's *Industrial Relations Reform Act 1993* which introduced a system of direct bargaining which could displace award regulation for the first time through certified agreements and enterprise flexibility agreements. Its passage amended the objects of the principal *Industrial Relations Act 1988* by providing that Australia's key national industrial relations legislation was:

*'to provide a framework for the prevention and settlement of industrial disputes which promotes the economic prosperity and welfare of the people of Australia' through objects which included 'encouraging and maintaining the making of agreements, between the parties involved in industrial relations, to determine matters pertaining to the relationship between employers and employees, particularly at the workplace or enterprise level'.<sup>86</sup>*

113. The second reading speech to the *Industrial Relations Reform Act 1993* also captured the Keating Government's desire to move to "a system based primarily on bargaining at the workplace, with much less reliance on arbitration at the apex". Under this system agreements could reduce award entitlements if considering employees' terms and conditions as a whole the reduction was not contrary to the public interest.
114. The very lifeblood driving the first wave of bargaining in the 1990s was identifying outdated entitlements and practices and eliminating them through trading off for higher wages and for alternative, more relevant terms and conditions.
115. The Keating Government reforms represented a decisive step towards placing bargaining at the enterprise level at the forefront of Australian industrial relations, and making bargaining the driving force in how Australians were to work. The philosophy underpinning these reforms, which still resonates today and should continue to drive our system, was encapsulated by the then Prime Minister in April 1993 when he described the features of the new system he was aiming for:

*Let me describe the model of industrial relations we are working towards.*

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<sup>86</sup> *Industrial Relations Act 1988* (Cth), s. 3(a).

*It is a model which places primary emphasis on bargaining at the workplace level within a framework of minimum standards provided by arbitral tribunals.*

*It is a model under which compulsorily arbitrated awards and arbitrated wage increases would be there only as a safety net.*

*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.*

*For most employees and most businesses, wages and conditions of work would be determined by agreements worked out by the employer, the employees and their union.*

*These agreements would predominately be based on improving the productive performance of enterprises, because both employers and employees are coming to understand that only productivity improvements can guarantee sustainable real wage increases.*

*We would have an Industrial Relations Commission which helped employers and employees reach enterprise bargains, which kept the safety net in good repair, which advised the Government and the parties of emerging difficulties and possible improvements, but which would rarely have to use its compulsory arbitral powers.*

*Instead, parties would be expected to bargain in good faith.*

*We would have sufficient harmony between State and federal industrial relations systems to ensure that they all head in the same direction and used the same general rules.*

*That is the goal we are working towards.<sup>87</sup>*

116. Post-implementation of the Keating Government reforms, the OECD concluded that “increased flexibility of working time, making wages and labour costs more flexible and reforming employment security provisions”<sup>88</sup> were essential policy components of a microeconomic reform agenda capable of delivering sustained growth in employment and living standards in domestic economies.
117. The subsequent Government’s *Workplace Relations Act 1996* (Cth)(WR Act) progressed the change agenda and comprehensively established a framework primarily focussed on collective and individual workplace agreements and away from centrally determined

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<sup>87</sup> Prime Minister Keating, (1993) Speech to the Institute of Company Directors, Melbourne, 21 April 1993.

<sup>88</sup> OECD (1994) *OECD Jobs Study*, (recommendations 4,5 and 6 of *OECD Jobs Study*, 1994 OECD Ministerial Council).

outcomes. The original objects of the WR Act, even though the subject of compromise, illustrated the shift:

*The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:*

- (a) *encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market; and*
- (b) *ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level; and*
- (c) *enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act; and*
- (d) *providing the means:*
  - (i) *for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level; and*
  - (ii) *to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment; and*
- (e) *providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them; and*
- (f) *ensuring freedom of association, including the rights of employees and employers to join an organisation or association of their choice, or not to join an organisation or association; and*
- (g) *ensuring that employee and employer organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively; and*
- (h) *enabling the Commission to prevent and settle industrial disputes as far as possible by conciliation and, where appropriate and within specified limits, by arbitration; and*

- (i) *assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers; and*
  - (j) *respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and*
  - (k) *assisting in giving effect to Australia's international obligations in relation to labour standards.*
118. It is critical to understand the commonality and consistency between the Keating / Brereton and Howard / Reith (with the Australian Democrats) reforms of this time. Putting to one side AWAs and changes to areas such as union entry, for collective agreement making, a straight line can be drawn between the 1993 and 1996 reforms and there was significant shared policy ground between the major parties.
119. The OECD endorsed the 1993 and 1996 policy changes, and called for further changes:
- The benefits of a comprehensive approach to structural reform have become apparent in the pick-up of Australia's multi-factor productivity growth...better management practices and work arrangements have improved capital productivity...*
- The flexibility of the labour market has increased by the move towards a more decentralised system of setting wages and other conditions of employment, but there is a need for more effective decentralisation...The reform process needs to be completed in the light of Australia's level of structural unemployment and the need to sustain the improvement in productivity performance.<sup>89</sup>*
120. The system of awards in Australia is the legacy of an industrial relations system focussed on centralised, arbitrated outcomes. It was a system shared only by New Zealand which abandoned it with the introduction of the *Employment Contracts Act 1991* following economic crisis which was to play role in improving in both employment outcomes and New Zealand's competitive position. Kasper summed up effects of the *Employment Contracts Act 1991* and related reforms in New Zealand a few years post-implementation:
- Previously antagonistic industrial relations have given way to cooperation between employers and workers, flexible adjustment to competitive conditions and an enhanced competitiveness of New Zealand workplaces and firms in a rapidly changing, internationally open economy...The main effect of the labour reforms has been to assist in making the supply-side of the New Zealand economy fairly price elastic...*

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<sup>89</sup> OECD (2001) Economic Survey Australia 2001.

*Employers and most employees have welcomed the freedoms under the new contracts system. In many sectors, productivity has risen steeply, reflecting more rational work practices. Managers are now able to effectively manage the human resources that firms hire. Real wages have risen, but slowly, reflecting productivity gains. Union membership and the number of union officials have fallen, as many workers now use bargaining agents to negotiate employment contracts. The frequency of strikes and lockouts has fallen considerably.*

*The ECA and the other reforms have created a “Kiwi job-creation machine”, which has increased aggregated employment by over 10 percent during the long upswing of 1991-95. It has nearly halved the overall unemployment rate within less than two years – in contrast to earlier upturns in the New Zealand cycle and the pattern in Australia. ...Labour market deregulation has also increased the market premia for skills and reduced transaction costs in operating about markets.*

*Most observers predict a period of sustained, inflation free-growth and further drops in unemployment ...as New Zealand – despite strengthening currency – is now seen as an internationally highly competitive exporter and an attractive location to internationally mobile capital and enterprise.<sup>90</sup>*

121. Of course subsequent New Zealand governments have not moved to recentralise that country’s labour market and have not reintroduced awards and arbitration.
122. It is clear that moves away from centralised labour regulation during this period contributed to a wide range of positive outcomes including growth in productivity, lower inflation, growth in real wages, less industrial disputation, and improved employment outcomes, as well as added resilience to economic crises, but it was also clear that the reform trajectory needed to be continued in Australia.
123. A key feature of the structural changes in Australia in 1993 and in 1996 was that they were taken by Australian governments of different political persuasions. Despite the visceral and tribal politicisation of industrial relations policy (which has only become worse since the 1990s) there was bipartisan support (at least between governments) for the new direction in Australian workplace relations which was to persist for some time. As was noted in the June 2002 *Report on Agreement Making in Australia under the Workplace Relations Act 1996*:

*For more than a decade now there has been widespread support for the policy of moving Australia’s formal workplace relations system away from its traditional focus on the centralised determination of wages and conditions of employment by industrial tribunals – through a system of industry and occupational awards – to agreements reached directly at the enterprise and workplace level.*

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<sup>90</sup> Kasper, W E “*Liberating labour: The New Zealand Employment Contracts Act*”, Kiel Working Papers, No. 694, (1995), pp. 1-2.



*Reforms to the wage setting arrangements began in the late 1980s with a growing recognition among Australians of the importance of ensuring greater international competitiveness by linking wages and improvements in the conditions of employment to increases in productivity, skill and flexibility at the workplace level...<sup>91</sup>*

124. A decade had passed since the reform process commenced under the Keating Government, and there was still agreement between the major political parties on the primacy of enterprise bargaining, and its importance for both driving living standards and increasing competitiveness. This agreement needs to be renewed and translated into a shared commitment to improve our bargaining system and again ensure it delivers productivity, efficiency and jobs in Australian workplaces.
125. The need to make enterprise based agreements a central part of the system has been endorsed by both major political parties, major employer organisations, the ACTU, and the majority of individual unions (although different approaches have been advocated).<sup>92</sup> As was noted in Australian Chamber's blueprint for the Australian Workplace Relations System, 'Modern Workplace: Modern Future', the challenge for Australia was to create a workplace relations framework where decisions about wages, conditions of employment and the resolution of disputes could be made in the workplace having regard to the circumstances and mutual interests of the actual employers and employees.<sup>93</sup>
126. It remains the Australian Chamber's firm view that such a system is the most effective way to lift economic performance and living standards in conjunction with each other, not at each other's expense. This has only been confirmed and made more urgent by the experiences of subsequent years, and the decline Australia's enterprise bargaining system now faces.
127. Only because key stakeholders held shared views regarding the direction in which the industrial relations system had to head, was the transition towards greater enterprise focus able to progress during the 1990's. This shift was in line with policies facilitating a move toward an open and competitive market and there was recognition that a decentralised labour market regulation is in the national interest. Referring to the reform of the 1990s the then Shadow Minister for Industrial Relations stated:

*These reforms were based upon partnerships being formed in the workplace. Perhaps for the first time in Australia's industrial history the focus became on partnerships to grow the cake, not simply adversaries fighting over how to divide it.<sup>94</sup>*

<sup>91</sup> Department of Employment and Workplace Relations and the Office of the Employment Advocate, Report on Agreement Making in Australia under the Workplace Relations Act 1996, June 2002.

<sup>92</sup> Department of Employment and Workplace Relations and the Office of the Employment Advocate (2002) Report on Agreement Making in Australia under the Workplace Relations Act 1996), June 2002.

<sup>93</sup> ACCI, "Modern Workplace: Modern Future – A Blueprint for the Australia Workplace Relations System 2002-2010", 2002

<sup>94</sup> Shadow Minister for Industrial Relations, Robert McClelland (2002) Speech to Industrial Relations Society of New South Wales, 17 May 2002.

128. However the political dynamic changed following the *Workplace Relations Amendment (Work Choices) Act 2005*, and arguably prior to this as various workplace reform bills stalled in the then Senate.
129. Adversarialism again dominated, shared policy ground was lost, and the policy overcorrection of the incoming Government through the introduction of the Fair Work Act threatened to arrest the advancement of the policy objectives agreed from the 1990s.
130. The OECD's 2008 Economic Survey of Australia cautioned:

*The simplification and gradual decentralisation of industrial relations since the early 1990s has made the economy more resilient. But the pursuit of reforms towards a greater individualisation of labour relations, following the WorkChoices Act in March 2006, did stir much controversy, because of equity concerns. [...] While equity concerns need to be addressed, care should be taken not to undermine labour market flexibility. To maintain a close link between productivity gains and wages, the future organisation of collective bargaining must remain within the company framework, as recognised by the government. Harmonising the system of industrial relations across the states is an important goal, but the result must not be alignment on the most restrictive standards.<sup>95</sup>*

131. Employers do not understand the Fair Work Act was designed, either explicitly or implicitly to diminish the key place enterprise bargaining is to play under the Australian workplace relations system, nor the bipartisan commitment to place enterprise bargaining at the heart of workplace relations, driving positive outcomes for employers and employees. We understood from statements and commitments from Labor leading into and following the 2007 election that the role for agreement making / bargaining was to remain essentially unchanged, and essentially as it was developed by the Keating Government 25 years ago.
132. It is the performance of the Fair Work system in practice that is the challenge. Notwithstanding the best of intentions, our bargaining system is no longer operating efficiently and positively, and it is failing to continue to deliver benefits for employers and employees.
133. Australia's current productivity growth is falling well short of the sustained, stronger productivity growth of previous decades. The Productivity Commission noted that since 2004 multi-factor productivity has stalled and that low wage growth and falling fixed capital investment suggest that a weak income outlook may persist past the decline in Australia's terms of trade.<sup>96</sup> Even returning to the much higher labour productivity growth of the 1990s would not be enough to maintain the per capita income growth Australia enjoyed in the 2000s given the drag from the declining terms of trade and ageing population over the next decade. The Productivity Commission has noted that while there are still skills available for today's work environment that can be drawn down on for some time, "failure to develop

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<sup>95</sup> OECD, "Economic Survey of Australia", *Policy Brief*, 2008, p. 8.

<sup>96</sup> Productivity Commission, 'Increasing Australia's future prosperity'. November 2016, p. 1.

policies most relevant to future productivity – and its outcome, higher income – will burden future generations with the eventual adjustment cost”.<sup>97</sup>

134. A failure to adopt productivity enhancing policies now risks long run impacts on Australia’s prosperity, the living standards of employees, and what we can achieve as a community into the future.
135. There remains a clear case for the reduction in the influence of awards and tribunals and to encourage workplace based bargaining with wages and conditions linked to productivity as was intended by the reforms of the 1990s, and as we have accepted as a shared goal for our system for well over two decades. This was a part of the vision of former Prime Minister Paul Keating in shifting the focus toward enterprise bargaining, stating “[o]ver time the safety net would inevitably become simpler. We would have fewer awards with fewer clauses.”<sup>98</sup>
136. However against the backdrop of Australia’s waning productivity and soft labour market conditions, aspects of the system are impeding the transition to a workplace based system. Bargaining is going backwards, which should signal significant concern for our policymakers. This is evident from the current decline in enterprise bargaining and the move toward recentralisation of the labour market is, in the Australian Chamber’s view, a move in the wrong direction. Proposals such as the *Fair Work Amendment (Pay Protection) Bill 2017* will have the practical effect of entrenching and exacerbating an already regrettable shift.
137. The Australian Chamber is gravely concerned about the politicisation of workplace relations in the current context, and the performance of the system against what should remain common goals. Unfortunately the finding of common ground in more recent instances of workplace relations reform has been very much the exception rather than the rule – and this has come as the need to do better has become ever more acute.
138. There is a need to re-endorse in principle consensus about the direction of policy settings to ensure their relevance to modern workplaces and to meet the productivity and labour market challenges that confront Australia, and to then more maturely and constructively engage with how the system can be improved. This means tackling key problems such as those flagged by the Productivity Commission, not making things worse through short sighted, reactive measures such as those contained in the *Fair Work Amendment (Pay Protection) Bill 2017*.
139. The important reforms of the 1990s would unlikely have been achieved or been able to endure without both sides of politics agreeing that such a movement was required, and we need policymakers to return to the spirit and commitment of the 1990s in combatting the problems we face today.

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<sup>97</sup> Productivity Commission, ‘Increasing Australia’s future prosperity’. November 2016, p. 1.

<sup>98</sup> Prime Minister Paul Keating, (1993) Speech to the Institute of Company Directors, Melbourne, 21 April 1993.



140. Policy proposals that would discourage bargaining are also at odds with the objects of enterprise bargaining as identified by the reform leaders that conceived the system and with the bipartisan consensus across more than 20 years that bargaining that should be encouraged, and be the mechanism to deliver productivity and competitiveness and outcomes in line with the needs of the enterprise and employees within it.

## 5 Other matters: penalty rates in retail, hospitality, fast-food [TOR (e)]

141. The fifth, and final Term of Reference asks the Committee to examine:

*any other related matter related to penalty rates in the retail, hospitality and fast-food sectors*

142. It is worth reiterating the crucial contribution that the hospitality and retail sectors make to employment, particularly youth employment, and the need to ensure our economy creates a broad range of options for which people can participate in paid work in order to meet the broad ranging needs of people in our community.
143. People seek different employment outcomes depending on their personal circumstances and for young people, students and first time jobs seekers the retail and hospitality sectors play a critical role in enabling labour market participation.
144. As noted earlier in this submission, Australians are becoming increasingly more educated and young Australians are spending a significantly greater portion of their time in educational activities during the week. It is therefore unsurprising that students will seek to balance their study with employment in sectors where trading activities fall outside of learning time.
145. There is evidence that suggests that the penalty rate is not the motivation behind the decision of many people to work in these industries. The Australian Work and Life Index 2014 found that:
- a. 'younger workers (18 to 24) were more likely to work weekends only, evenings and weekends, or any type of unsocial hours (57.8%);<sup>99</sup>
  - b. 'workers aged 18 to 24 years were ... less likely to report financial reliance on these payments and more likely to continue working if penalty rates were not offered;<sup>100</sup>
  - c. child free couples and single employees with no children 'were also more likely to continue working if penalty rates were not available';<sup>101</sup>
  - d. 'casual workers were more likely to receive penalty rates for work outside standard hours and to continue working non-standard hours if penalty rates were not available'.<sup>102</sup>
146. These findings suggest that people will be seeking different employment outcomes depending on their life stage and personal circumstances. As observed by Richardson:

<sup>99</sup> Daly T (2014), *Evenings, nights and weekends: Working unsocial hours and penalty rates*: Centre for Work and Life, University of South Australia, p 9.

<sup>100</sup> Daly T (2014), *Evenings, nights and weekends: Working unsocial hours and penalty rates*: Centre for Work and Life, University of South Australia, p 14.

<sup>101</sup> Daly T (2014), *Evenings, nights and weekends: Working unsocial hours and penalty rates*: Centre for Work and Life, University of South Australia, p 15.

<sup>102</sup> Daly T (2014), *Evenings, nights and weekends: Working unsocial hours and penalty rates*: Centre for Work and Life, University of South Australia, p 16.

*There is a time in the lives of many people when they want full-time permanent employment. This is especially true for men in their main earning years and women too, if they do not have young children. But there are also times in the lives of many people when they want less 'consuming' forms of employment to accommodate study, family needs, health limitations and phased retirement.*

...

*The much greater diversity of the modern workforce is better suited to a variety of terms of employment, than by full-time (and long) hours permanent terms as the only options...<sup>103</sup>*

147. In circumstances where work on weekends and evenings is attractive to people it makes no sense to set rates at a level that restricts trading and the availability of this type of work. As observed by the Productivity Commission:

*In principle, penalty rates in awards should not be set in excess of the minimum necessary to avoid unfair or unduly harsh treatment of employees, and an efficient level of penalty rates would be one which is just sufficient to induce people with appropriate skills to voluntarily work the relevant hours.*

*Some workers may be very comfortable with (or even prefer) weekend and evening work and, for these people, the additional pay incentive may not need to be as large as exists under the current penalty rate structure.<sup>104</sup>*

148. There are currently over 1.1 million underemployed people in Australia and ABS data tells us that :
- 178,400 of these people work in the Accommodation and Food Services Industry (20.0% of 892,500 employees working in the industry).
  - 196,900 work in the Retail Industry (16.1% of 1,222,500 employees working in the industry).
149. 15 to 25 year old employees are largely concentrated in a few industries and the most common sources of jobs for young people are retail trade and accommodation and food services. These are industries that are heavily award reliant.
150. There are over 650,000 people aged 15-24 either unemployed or underemployed and the long-term unemployment rate is highest for young people compared to other age groups. Numerous studies point to the long-lasting effects long term unemployment and high levels of youth unemployment not only on future employability, but also on health and social exclusion, including a high correlation with drug abuse, violence and crime. <sup>105</sup> With long

<sup>103</sup> Richardson S, *Do we all want permanent full-time jobs?*, Insights Vol 15, April 2014, University of Melbourne Faculty of Business and Economics, pp 15-21.

<sup>104</sup> Productivity Commission 2011, *Economic Structure and Performance of the Australian Retail Industry*, Report no. 56, Canberra.

<sup>105</sup> See for example article re car thefts doubling in Townsville: <http://longtermunemployment.org.au/discussion/category/regional-unemployment/>

term unemployment on the rise there is a heightened risk of many people within our community facing a lifetime of welfare dependence.

151. Youth unemployment is persistently high at over 13 percent, more than double the national average. In some regions of Australia it is much worse as recent analysis shows:

**ABS Labour Force Region – February 2017 (SA4)**

	Unemployment rate	Youth unemployment rate
<b>NSW</b>		
Central Coast	5.4%	16.6%
Far West and Orana	4.7%	17.3%
Illawarra	6.2%	14.1%
Mid North Coast	5.8%	18.9%
New England and North West	7.1%	14.6%
Southern Highlands and Shoal Haven	6.7%	24.1%
Sydney – Ryde	5.8%	19.3%
Sydney – Parramatta	5.9%	15.7%
<b>QLD</b>		
Brisbane- East	6.6%	20.3%
Brisbane – South	6.7%	14.4%
Brisbane – West	4.8%	15.7%
Cairns	7.3%	21%
Ipswich	7.8%	13.8%
Outback	11.4%	41.4%
Townsville	11.3%	21.7%
Wide Bay	9.5%	24.7%
<b>SA</b>		
Adelaide – North	8.2%	18.8%
Adelaide – West	7.3%	17.3%
<b>TAS</b>		
Hobart	5.9%	14.3%
Launceston and North East	7.2%	18.8%
South East (Tasmania)	6.5%	17.8%
<b>VIC</b>		
Melbourne – West	8.3%	15.5%
Melbourne – South East	6.7%	17.3%
Melbourne – North West	7.6%	17.8%
Melbourne – North East	5.5%	17.1%
La Trobe - Gippsland	7.6%	14.6%
Hume	5%	14.1%
<b>WA</b>		
Mandurah	10.8%	18.9%
Perth – North East	6.3%	14.7%
Perth – South West	7.1%	15.7%
Western Australia – Wheat Bely	7.5%	18.2%

## 6 Concluding comments

152. Four out of every five jobs in Australia are created by the private sector. Retail Trade employs in excess of 1.2 million people which is around 10.1 per cent of the total workforce. Accommodation and Food Services employs approximately 850,000 persons which is around 7.1 per cent of the total workforce (ABS trend data).

### 6.1 Retail and hospitality businesses must be supported in their efforts to employ

153. The retail trade and accommodation and food services sectors make the largest contribution to youth employment are collectively employing over 770,000 people aged 15-24 years. This is not surprising given the nature of work in these sectors. Many roles in these sectors don't require high skill levels making them great entry level opportunities. They also offer work on weekends and evenings, making it easier for those combining work and study. This is important given more than half of people aged 15-24 are enrolled in a full-time study in Australia.
154. Customer facing and team based roles in these industries help young people develop their interpersonal and communication skills. Research has identified these as critical elements in employer hiring decisions. A job as in retail or hospitality, whether as a shop assistant or a waiter, has traditionally served as a stepping stone for many young people in the Australian labour market and higher paying jobs later on in life.
155. While the retail sector has a proud history as the major employer of young people in Australia it is a sector confronting significant challenges and the critical job opportunities that this sector creates are contracting.
156. We have recently seen headlines such as "Topshop Australia goes into voluntary administration amid mounting debts", "Retail job losses pile up as Marc, David Lawrence store closures begin", "Herringbone, Rhodes & Beckett join retail carnage", "The Reject Shop cops \$93 million share-price wipe out", "Pumpkin Patch collapse: 27 stores to close, 145 jobs to go" and "More retail collapses tipped".
157. Policies that do not support businesses in these sectors in their efforts to succeed, grow and employ are bad policies.

### 6.2 Wages that are too high risk harming employment

158. The impacts that high award wages have on employment is a contested subject but there is acknowledgement from both the Productivity Commission and Fair Work Commission that a rate that is "too high" will have negative employment effects.
159. What is "too high" is a complex question requiring consideration of the circumstances at the time. The Productivity Commission has also acknowledged that it is the "would be



- employees” that stand to feel the negative impacts of any wage increase and those with most marginal attachment to the labour market.
160. The Fair Work Commission accepted evidence demonstrating that the current level of penalty rates has led employers to reduce labour costs associated with Sunday and public holiday trading by imposing a number of operational limitations. They have responded by restricting trading hours, lowering staff levels and restricting the type and range of services provided.
  161. The Fair Work Commission also accepted that the evidence that a reduction in penalty rates is likely to lead to increased trading hours on Sundays and public holidays, a reduction in the hours worked by some owner operations, an increase in the level and range of services offered and an increase in overall hours worked.
  162. These considerations are particularly relevant to the 1.8 million Australians looking for work, or wanting more work. There are over 700,000 unemployed Australians over 250,000 of which are young people. There are a further 1.1 million underemployed Australians. There are almost 400,000 people working in the retail and hospitality sectors who want more hours. Retail trade, our largest employer of young people, has recently recorded the largest decline in employment across all industries.
  163. It is for these people that the Fair Work Commission’s decision to modestly reduce penalty rates is so important.
  164. The decision makes some progress in helping some Australian businesses open their doors and offer more work with the Fair Work Commission recognising that the modern awards were not providing a fair nor relevant safety net.
  165. The purchasing habits of Australians are shifting. They are attracted to the convenience that online shopping offers and competitive pressures from domestic and international retailers are keeping prices and therefore inflation low. Some suggest that high wages will see more money in the hands of consumers which will be good for these businesses. However what this position doesn’t acknowledge is the increasingly high levels of award-reliance and that many of the businesses that some claim will benefit from higher award wages are the same ones that will have to pay the higher wages which increases their operating costs.
  166. The Fair Work Commission identified that the businesses impacted by its decision to modestly reduce penalty rates include small and medium businesses with lower profit margins, lower survival rates, facing strong or intense competition and many that are operating weekends.
  167. We need to be pulling policy levers that will enable these businesses to interact with the market in order for them to survive and it is clear that in our modern, digital economy our offering services between the hours of 9am to 5pm Monday to Friday does not satisfy customer needs.



168. The modest reduction in penalty rates awarded by the Fair Work Commission is not the silver bullet when it comes to helping businesses in dealing with the challenges they face but they are one of many measures that can help and in doing so will increase the work on offer and help preserve jobs.



## 7 About the Australian Chamber

The Australian Chamber of Commerce and Industry is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

## Attachment A – Phased Sunday rate reductions

On 6 June 2017, the Fair Work Commission handed down its decision on transitional arrangements for Sunday penalty rates.

### Fast Food Award

Full-time and part-time employees – Level 1 only

- 1 July 2017 150 per cent → 145 per cent
- 1 July 2018 145 per cent → 135 per cent
- 1 July 2019 135 per cent → 125 per cent

Casual employees (inclusive of casual loading) – Level 1 only

- 1 July 2017 175 per cent → 170 per cent
- 1 July 2018 170 per cent → 160 per cent
- 1 July 2019 160 per cent → 150 per cent

### Hospitality Award

Full-time and part-time employees

- 1 July 2017 175 per cent → 170 per cent
- 1 July 2018 170 per cent → 160 per cent
- 1 July 2019 160 per cent → 150 per cent

### Retail Award

Full-time and part-time employees

- 1 July 2017 200 per cent → 195 per cent
- 1 July 2018 195 per cent → 180 per cent
- 1 July 2019 180 per cent → 165 per cent
- 1 July 2020 165 per cent → 150 per cent

Casual employees (inclusive of casual loading)

- 1 July 2017 200 per cent → 195 per cent
- 1 July 2018 195 per cent → 185 per cent
- 1 July 2019 185 per cent → 175 per cent

### Pharmacy Award

Full-time and part-time employees

- 1 July 2017 200 per cent → 195 per cent
- 1 July 2018 195 per cent → 180 per cent
- 1 July 2019 180 per cent → 165 per cent
- 1 July 2020 165 per cent → 150 per cent

Casual employees (inclusive of casual loading)

- 1 July 2017 225 per cent → 220 per cent
- 1 July 2018 220 per cent → 205 per cent
- 1 July 2019 205 per cent → 190 per cent
- 1 July 2020 190 per cent → 175 per cent

## Attachment B: Examples of changes to Sunday penalty rates in retail and hospitality awards from 1 July 2017

Below are examples of changes to Sunday penalty rates in the General Retail Industry Award, the Hospitality Industry (General) Award, the Fast Food Industry Award and the Pharmacy Industry Award in the first year of phasing.

	2016-17 Sunday hourly rate	2017-18 Sunday hourly rate	2016-17 Sunday 8 hrs	2017-18 Sunday 8 hrs	Change in Sunday pay
<b>Retail</b>					
<b>Casual</b>					
Shop Assistant L1	\$ 38.88	\$ 39.16	\$ 311.04	\$ 313.28	\$ 2.24
Store Manager L8	\$ 47.58	\$ 47.91	\$ 380.64	\$ 383.28	\$ 2.64
<b>Permanent</b>					
Shop Assistant L1	\$ 38.88	\$ 39.16	\$ 311.04	\$ 313.28	\$ 2.24
Store Manager L8	\$ 47.58	\$ 47.91	\$ 380.64	\$ 383.28	\$ 2.64
<b>Pharmacy</b>					
<b>Casual</b>					
Pharmacy Assistant L1	\$ 43.74	\$ 44.18	\$ 349.92	\$ 353.44	\$ 3.52
Pharmacist Manager	\$ 71.48	\$ 72.20	\$ 571.86	\$ 577.60	\$ 5.74
<b>Permanent</b>					
Pharmacy Assistant L1	\$ 38.88	\$ 39.16	\$ 311.04	\$ 313.28	\$ 2.24
Pharmacist Manager	\$ 63.54	\$ 64.00	\$ 508.32	\$ 512.00	\$ 3.68
<b>Hospitality</b>					
<b>Casual</b>					
Food/Bev/Kitchen Attendant L1	\$ 31.87	\$32.92	\$ 254.94	\$263.36	\$8.42
Cook (L6, Grade 5)	\$ 39.36	\$40.65	\$ 314.86	\$325.20	\$10.34
<b>Permanent</b>					
Food/Bev/Kitchen Attendant L1	\$ 31.87	\$ 31.98	\$ 254.94	\$ 255.84	\$ 0.90
Cook (L6, Grade 5)	\$ 39.36	\$ 39.49	\$ 314.86	\$ 315.92	\$ 1.06

**Fast Food (level 1)*****Casual***

Fast food worker L1	\$ 34.02	\$ 34.14	\$ 272.16	\$ 273.12	\$ 0.96
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***Permanent***

Fast food worker L1	\$ 29.16	\$ 29.12	\$ 233.28	\$ 232.96	-\$ 0.32
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***This does not constitute legal or payroll advice. Employers should contact their local Chamber of Commerce or industry association for more information about changes to award rates. Rates in table above are based on Fair Work Ombudsman Pay Guides as at 28 June 2017.***



## Australian Chamber Members

**AUSTRALIAN CHAMBER MEMBERS:** BUSINESS SA CANBERRA BUSINESS CHAMBER CHAMBER OF COMMERCE NORTHERN TERRITORY **CHAMBER OF COMMERCE & INDUSTRY QUEENSLAND** CHAMBER OF COMMERCE & INDUSTRY WESTERN AUSTRALIA **NEW SOUTH WALES BUSINESS CHAMBER** TASMANIAN CHAMBER OF COMMERCE & INDUSTRY **VICTORIAN CHAMBER OF COMMERCE & INDUSTRY** **MEMBER NATIONAL INDUSTRY ASSOCIATIONS:** ACCORD – HYGIENE, **COSMETIC AND SPECIALTY PRODUCTS INDUSTRY** AIR CONDITIONING AND MECHANICAL CONTRACTORS' ASSOCIATION **AGED AND COMMUNITY SERVICES AUSTRALIA** ANIMAL MEDICINES AUSTRALIA **ASSOCIATION OF INDEPENDENT SCHOOLS OF NSW** ASSOCIATION OF FINANCIAL ADVISERS **AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION** AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION **AUSTRALIAN BEVERAGES COUNCIL LIMITED** AUSTRALIAN DENTAL ASSOCIATION **AUSTRALIAN DENTAL INDUSTRY ASSOCIATION** AUSTRALIAN FEDERATION OF EMPLOYERS AND INDUSTRIES **AUSTRALIAN GIFT AND HOMEWARES ASSOCIATION** AUSTRALIAN HOTELS ASSOCIATION **AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP** AUSTRALIAN MADE CAMPAIGN LIMITED **AUSTRALIAN MEAT PROCESSING ASSOCIATION** AUSTRALIAN MINES AND METALS ASSOCIATION **AUSTRALIAN PAINT MANUFACTURERS' FEDERATION INC** AUSTRALIAN RECORDING INDUSTRY ASSOCIATION **AUSTRALIAN RETAILERS' ASSOCIATION** AUSTRALIAN SELF MEDICATION INDUSTRY **AUSTRALIAN STEEL INSTITUTE** **AUSTRALIAN TOURISM AWARDS** AUSTRALIAN VETERINARY ASSOCIATION **BOATING INDUSTRY ASSOCIATION** BUSINESS COUNCIL OF CO-OPERATIVES AND MUTUALS **BUS INDUSTRY CONFEDERATION** CARAVAN INDUSTRY ASSOCIATION **CEMENT CONCRETE AGGREGATES AUSTRALIA** CHEMISTRY AUSTRALIA **CHIROPRACTORS' ASSOCIATION OF AUSTRALIA** CRUISE LINES INTERNATIONAL ASSOCIATION **CONSULT AUSTRALIA** CUSTOMER OWNED BANKING ASSOCIATION **DIRECT SELLING ASSOCIATION OF AUSTRALIA** EXHIBITION AND EVENT ASSOCIATION OF AUSTRALASIA **FINANCIAL PLANNING ASSOCIATION OF AUSTRALIA** FITNESS AUSTRALIA **HOUSING INDUSTRY ASSOCIATION** FRANCHISEE FEDERATION AUSTRALIA **LARGE FORMAT RETAIL ASSOCIATION** LIVE PERFORMANCE AUSTRALIA **MASTER BUILDERS AUSTRALIA** MASTER PLUMBERS & MECHANICAL SERVICES ASSOCIATION OF AUSTRALIA **MEDICINES AUSTRALIA** MEDICAL TECHNOLOGY ASSOCIATION OF AUSTRALIA **NATIONAL DISABILITY SERVICES** NATIONAL ELECTRICAL AND COMMUNICATIONS ASSOCIATION **NATIONAL EMPLOYMENT SERVICE ASSOCIATION** NATIONAL FIRE INDUSTRY ASSOCIATION **NATIONAL ONLINE RETAIL ASSOCIATION** NATIONAL RETAIL ASSOCIATION LIMITED **NATIONAL ROADS AND MOTORISTS ASSOCIATION** THINK BRICK AUSTRALIA **NSW TAXI COUNCIL** OUTDOOR MEDIA ASSOCIATION **OIL INDUSTRY INDUSTRIAL ASSOCIATION** PHARMACY GUILD OF AUSTRALIA **PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA** PRINTING INDUSTRIES ASSOCIATION OF AUSTRALIA **RECRUITMENT AND CONSULTING SERVICES ASSOCIATION OF AUSTRALIA AND NEW ZEALAND** RESTAURANT AND CATERING AUSTRALIA **SCREEN PRODUCERS AUSTRALIA** THE TAX INSTITUTE **VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE**