

**Department of Economic Development, Jobs Transport and Resources  
Commissioned Research Report**

# **The impact of the penalty rates decision on Australian and Victorian workers in retail and hospitality industries**

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# The impact of the penalty rates decision on Australian and Victorian workers in retail and hospitality industries

## Executive Summary

### A. Introduction

This report considers the impact of the FWC penalty rates decision on the retail trade and hospitality industries. 'Hospitality' here refers to the accommodation and food services industry (as defined by the ANZSIC industry classification used by the ABS).

### B. Numbers of award-reliant workers and workers in the industries

On average, through 2014-16, 1.1 million people were employed in the retail industry and 720,000 in accommodation and food services. It is estimated that the average number of Victorian employees in the retail industry over the period 2014-16 was around 290,000, and in accommodation and food services it was around 175,000.

Across Australia, 370,000 non-managerial retail employees and 320,000 non-managerial employees in accommodation and food services were reliant on awards. In 2016, 18.8 per cent of Victorian non-managerial employees were award-reliant, compared to the national estimate of 24.5 per cent. In Victoria, an estimated 80,000 retail workers are award-reliant and almost 70,000 hospitality workers are award-reliant.

### C. Weekend work

Over 2014-16, an average of 280,000 Australian employees in retail worked Sundays. This represented 25 per cent of retail workers. An average of over 270,000 Australian employees in hospitality worked Sundays. This represented around 38 per cent of hospitality workers.

Many retail employees entitled to penalty rates are not covered by awards but by collective agreements or individual arrangements.

### D. The effects of award non-compliance

For some employees, the reduction in Sunday penalty rates represents a reduction in the amounts they are entitled to and paid, while for others it represents a reduction in their entitlements but not in how much they are paid. Something around 15 per cent of penalty rates reductions for retail workers were unpaid, as were a little below 32 per cent in accommodation and food services, where the scope for exploitation of workers with a non-English speaking background, including through 'co-ethnicity', is higher. In Victoria, probably between 17,000 and 25,000 award-reliant retail employees experience paid reductions in Sunday penalty rates, and from 3,000 to 5,000 award-reliant retail workers experienced unpaid reductions in Sunday penalty rates. Similarly, between 15,000 and 20,000 award-reliant Victorian hospitality workers likely probably experienced paid reductions in in Sunday penalty rates, while from 6,000 to 10,000 award-reliant hospitality workers experienced unpaid reductions in Sunday penalty rates.

## **E. Gender**

Female employment is low in motor vehicle and parts retailing, and below half in fuel retailing, but above half in all other retail industry subdivisions, and the highest in the large category, 'other' (i.e. non-food) store-based retailing. Females are the majority in both the accommodation and food services subdivisions. While males made up approximately 55 per cent of permanent full-time employees in both the retail and hospitality industries, females dominated permanent part-time and casual employment in both, comprising 61 to 66 per cent of casual employees and 69 to 76 per cent of permanent part-time employees.

## **F. Profile of Saturday and Sunday workers**

In total, 57 per cent of Sunday workers in retail and hospitality were female in 2011-13. In retail trade, around 40 per cent of employees were casuals (employees without paid leave entitlements), as were 64 per cent in accommodation and food services. A majority of tertiary students who are employed work in either the retailing or hospitality industries. However, this did not mean that most people who work in those industries are tertiary students, let alone that they were not in need. The majority of retail employees who would be affected by changes to weekend penalty rates were *not* students, even though a significant minority were. Amongst those working on Sundays in retail trade, students were disproportionately found amongst casuals. Changes in penalty rates in retail and hospitality affected not only tertiary students but also a significant number of people who are likely to be dependent on hospitality employment as their sole source of income.

## **G. Regional aspects**

Approximately 24 per cent of Victorian employment in both industries—a total of 126,000 jobs across retail and hospitality—is located outside Melbourne. It seems highly likely that award reliance would be higher in non-metropolitan Victoria than in Melbourne. For both retail trade and accommodation and food services, employment in those industries is a higher proportion of regional employment outside of Melbourne than it is inside Melbourne. Amongst the regions, retail trade has the highest proportion of regional employment in Ballarat (where it is 14.2 per cent of regional employment) while accommodation and food services has the highest proportion of regional employment in Warrnambool and South West (8.2 per cent of regional employment).

## **H. Indirect impact on workers under collective agreements or individual arrangements**

The penalty rates decision directly affects those workers in retail and hospitality on awards, but it also is likely to affect the pay of workers in retail and hospitality on other instruments, that is on individual arrangements and collective agreements. This effect occurs through two mechanisms.

First, some non-award-reliant workers will be themselves receiving penalty rates, under the terms of either their collective agreement or their individual contract. While a collective agreement remains in force until it is cancelled or replaced, and an individual contract continues until it is renegotiated, unilaterally changed by management or is superseded by award movements, it is likely that the lower penalty rates will form the reference point for future negotiations when new agreements or contracts are negotiated.

The numbers that follow are point estimates, produced for the purposes of calculating the bottom line ranges in the next section. These point estimates should not be taken as indicating the precision that such estimates might imply and the point ranges in the section that follows are better indications of the true ranges.

It appears that approximately 80,800 'non-award' retail employees (non-award being simply employees on collective agreements or individual arrangements) and 70,400 'non-award' hospitality employees receive penalty rates for Sunday work.

Second, even when penalty rates are absorbed into loaded rates in a registered enterprise agreement and not directly paid, they form part of the Better Off Overall Test (BOOT) below which enterprise agreements cannot legally pay. When award penalty rates fall, the benchmark for the BOOT test also falls and so, in the long run, wage increases are likely to be lower. Likewise, even if an individual contract does not explicitly provide for penalty rates, a worker on an individual contract cannot receive less than they would be entitled to under the award. So, when penalty rates fall, future individual contracts can provide for lower wages than would otherwise be the case.

In both industries, collective agreements pay little or nothing more than awards, and so changes to penalty rates in awards are highly likely to affect collective agreements through the operation of the BOOT. Around 53,800 employees nationally appear to be on retail collective agreements that do not contain penalty rates but in which Sunday penalty rates are relevant to the BOOT. Similarly, 56,800 are on hospitality collective agreements that do not contain penalty rates but in which Sunday penalty rates are relevant to the BOOT. In addition, it appears that around 55,800 non-managerial Sunday retail employees are on individual arrangements that are potentially influenced by cuts in penalty rates and 45,800 non-managerial Sunday hospitality employees are on individual arrangements that are potentially influenced by cuts in penalty rates.

#### **I. Total numbers of employees directly and indirectly affected by penalty rate reductions**

In total, then, we estimate that: 90,000 to 95,000 non-managerial Sunday employees in retail are directly affected by reductions in penalty rates (this represents about 34 per cent of non-managerial employees in retail trade) and 155,000 to 160,000 non-managerial Sunday employees in retail are indirectly affected by the reductions in penalty rates (about 58 per cent of non-managerial employees in retail trade).

Similarly, 120,000 to 125,000 non-managerial Sunday employees in hospitality are directly affected by reductions in penalty rates (about 41 per cent of non-managerial employees in hospitality); and 145,000 to 150,000 non-managerial Sunday employees in hospitality are indirectly affected by the reductions in penalty rates (about 50 per cent of non-managerial employees in hospitality).

#### **J. Impact on pay rates**

In most awards where reductions have occurred, the reductions in Sunday rates are equivalent to a cut of 13 to 17 per cent in hourly pay, but in the Retail Award the reduction for permanent workers is equivalent to 25 per cent of hourly pay. The Retail Award (with a 25 per cent cut for permanent workers, and a 14 per cent cut for casuals) and the

Hospitality Award (with a 14 per cent cut for permanent workers) are very likely the two largest awards under consideration here. Cuts in public holiday penalty rates are consistently equivalent to a 9 to 10 per cent reduction on previous Sunday hourly pay rates. Many reductions are worth around \$5 per hour, though the lowest reduction for adult permanent employees on the large Retail Award is closer to \$10 per hour at the lower end of the classification scale, growing to \$12 per hour for higher level retail employees, and the reductions for permanent workers on the Pharmacy Award range from \$10 to \$16 per hour.

#### **K. Losses in daily wages**

In the absence of other published data, a 1992 time use survey suggests that employees work around 5.5 hours per Sunday. For 5.5 hours work, the losses for an affected Sunday employee in the hospitality industry would range between \$25 and \$31 per day. The losses for an affected Sunday employee in the retail trade industry working 5.5 hours would range between \$31 and \$65 per day (but would be higher for higher classification employees under the Pharmacy Award).

On public holidays, the losses for an affected employee in either industry working 5.5 hours would range between \$25 and \$33 per day (but again would be higher for higher classification employees under the Pharmacy Award).

#### **L. Impact on weekly pay after accounting for employment effects**

The main justification for the reductions in penalty rates was the increase in employment that would result. There are serious doubts about whether any employment effects would materialise, and there is evidence that there would be no significant employment gains. However, we should also consider the consequences if there are positive employment effects. Econometric research suggests that an increase in the number of hours worked in the industry is a more plausible consequence of reduced penalty rates than an increase in the total number of jobs. No employer evidence to the FWC proceedings on penalty rates suggested that there would be a reduction in prices flowing from them, suggesting again that employment effects would be muted. Four scenarios are considered, assuming elasticities of hours worked by workers on penalty rates with respect to the value of penalty rates of: -0.5, -0.3, -0.1 and 0.

For an average level 1 employee under the retail award, total Sunday earnings would fall by between 16 per cent and 25 per cent, a result of the combined effect of a 25 per cent drop in hourly pay and an increase in hours worked of up to 0.5 hours or 12.5 per cent. This corresponds to earnings losses of from \$33 to \$53 per week, for an employee working for 5.5 hours on a Sunday before the penalty rate changes take effect. For low-classification workers on public holidays, the earnings losses range from 5 per cent to 10 per cent, depending on the elasticity assumed. For high-classification employees under many awards shown in Table 18, the dollar value of the loss ranges from \$15 to \$37. However, for high-classification permanent employees under the Pharmacy Award the losses begin around \$55 on the most optimistic of the elasticity scenarios, and for high-classification permanent employees under the common Retail Award the losses begin at \$30 on the most optimistic of the elasticity scenarios and range up to \$48 per week where elasticity is zero.

Losses range from \$14 to \$27 per holiday, for a low-classification employee working for 5.5 hours on a public holiday before the penalty rate changes take effect, and from \$15 to \$44 for higher-classification employees.

A labour supply effect is likely. With lower wages, some workers will cease to offer themselves for Sunday work, and their place may be taken by another worker. The net transfer of income from labour to employers is not materially changed by this supply-side behaviour, though a greater number of employees (some becoming former employees) would suffer a reduction in income, while some new employees would be added to the payroll.

#### **M. Impact on annual earnings**

For low-classification employees working 5.5 hours per Sunday, annual earnings losses due to changes in penalty rates range from around \$750 to \$1600 in hospitality and from \$900 to \$2800 in the retail industry, depending on the award and the assumed elasticity. For high classification employees working 5.5 hours per Sunday, lost earnings due to penalty rates changes range from \$900 to \$1600 in hospitality, from \$1100 to \$3400 in retail trade, and from \$1400 to \$4600 in pharmacies. Any Sunday workers also working public holidays would experience further annual reductions, due to changes in public holiday penalty rates.

#### **N. Total impact on labour incomes and aggregated losses**

if Sunday employees work an average of 5.5 hours on Sundays, the total direct earnings losses across the two industries are between \$220 million and \$370 million, depending on the elasticity assumption used. A minority (about 22 per cent) of these losses are 'unpaid', but the majority are 'paid' losses. The total potential (direct and indirect) losses over the medium term across the two industries, if Sunday employees work an average of 5.5 hours on Sundays, could range from \$520m to \$1 billion, again depending on elasticity estimates used, though the extent to which potential losses translate into actual losses is unknown.

#### **O. Impact on earnings equity**

At an individual level, employees in the retail and hospitality industry were the lowest paid in the country. Reducing earnings of this group would necessarily increase the inequality of the distribution of individual earnings, whether measured on an hourly or weekly basis and whether referring to full-time workers or to all workers.

Households containing any adult retail employees are worse off than other households by a range of measures, including wage and salary income, gross income, expenditure on non-discretionary items, ability to access financial resources in an emergency and ability to pay bills on time. There is no reason to believe that the situation would be reversed for hospitality employees.

Reductions in penalty rates would therefore have the effect of widening the inequality of individual earnings and also widening the inequality of household earnings.

#### **P. Impact on the gender pay gap**

A reduction of penalty rates in those industries will widen the overall gender pay gap (the ratio of female to male hourly earnings). The order of magnitude of the effect is to add 0.1 percentage points to the gap in hourly average wage rates across the economy as a whole.

### **Q. Impact on individual employment choices**

Underemployment is most pervasive in the retail and hospitality industries. Those who work on Sunday have worse work life interference than other workers. Underemployment is most pervasive in the retail and hospitality workers. Qualitative research indicated that: many workers in retail and hospitality are under financial pressure; many have little 'control' over their employment schedule, with penalty rates an essential element in accepting Sunday work; some employees gained from the social interactions at work on Sundays; but many found Sunday work difficult because of disruption to shared time with others, and were generally averse to it because of the loss of social, familial, rest or leisure time. That said, some voiced concern about refusing Sunday work due to either job insecurity, the prospect of employer retribution or underemployment. They had low power in the employment relationship.

### **R. Loaded rates as an alternative to penalty rates**

A loaded rate is 'a rate which is higher than the applicable minimum hourly rate specified in the modern award and is paid for all hours worked instead of certain penalty rates (such as the penalty rates for Saturday and Sunday work)'. The FWC is considering their potential use in retail awards. Any future move to 'loaded rates' would increase the variability of the losses, such that the greatest losses (above those previously discussed) would be experienced by people working public holidays (particularly holidays such as Christmas), and then by people working Sundays.

### **S. Conclusions**

Overall, there are significant income losses arising from cuts to penalty rates in the retail and hospitality industries. Even allowing for controversial employment gains, in the average case Sunday employees would end up working longer hours for less total pay, and so would be unambiguously worse off. In practice, some employees would not be offered any additional hours (and face a larger reduction in Sunday pay), while some others would have a greater increase in hours (and so face a smaller reduction, or possibly an increase, in Sunday pay). These estimates do not take account of any reductions in hours worked at other days of the week, due to any redistribution of hours worked from weekdays to Sundays. As no lay employer evidence indicated any reduction in prices, it is unlikely that overall demand for retail or hospitality services would increase by much, if at all, so it is plausible that any increase in Sunday hours would be partly or fully offset by reductions in hours on other days of the week. Indeed, we do not quantify all possibilities, such as the potential effects of 'loaded rates', or the potential effects of other future decisions on penalty rates outside the retail and hospitality sector. While a reduction in penalty rates in the retail and hospitality sectors would likely increase pressures to eventually flow on reductions to other sectors, those potential effects are not estimated or considered here.



## The impact of the penalty rates decision on Australian and Victorian workers in retail and hospitality industries

### A. Introduction

1. In February 2017, the Fair Work Commission (FWC) made a decision on penalty rates in the retail and hospitality industries<sup>1</sup> that had the effect of reducing penalty rates by up to a quarter. The most important change was a reduction in the Sunday rate for full-time and part-time employees under the Retail Award<sup>2</sup> from 200 to 150 per cent of the ordinary wage. For full-time and part-time employees under the Pharmacy Award,<sup>3</sup> a similar reduction was applied, while for such employees under the Hospitality Award,<sup>4</sup> the reduction was from 175 to 150 per cent, and for level 1 employees in the Fast Food Award<sup>5</sup> from 150 to 125 per cent. Casual employees typically experienced a reduction of 25 percentage points, from 200 per cent in the Retail and Pharmacy awards, and from 175 per cent in the Fast Food Award, such that their Sunday penalty rate ended up 25 per cent age points higher than that for permanent (full-time and part-time) workers.
2. The 2017 decision followed from an earlier (2014) decision to reduce Sunday penalty rate for level 1 and 2 casual restaurant workers from 175 per cent to 150 per cent,<sup>6</sup> bringing it in line with the Saturday rate. No further changes were made to the Restaurant Award's weekend rates in the 2017 decision, but the idea of reducing rates for low-classification employees was, as mentioned, also adopted in the Fast Food Award, and public holiday penalty rates were reduced in the Restaurant Award—as they were in most retail and hospitality awards, from 250 to 225 per cent (plus an extra 25 per cent for casuals).
3. The term 'hospitality' in this report refers to the accommodation and food services industry (as defined by the ANZSIC industry classification used by the ABS). The

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<sup>1</sup> [2017] FWCFB 1001

<sup>2</sup> The *General Retail Industry Award 2010*

<sup>3</sup> The *Pharmacy Industry Award 2010*

<sup>4</sup> The *Hospitality Industry (General) Award 2010*

<sup>5</sup> There are only three classification levels in this award, the *Fast Food Industry Award 2010*.

<sup>6</sup> [2014] FWCFB 1996

Hospitality Industry (General) Award 2010 was the most common modern award used by award-reliant organisations within the accommodation and food services industry in 2013, being used by more than six in 10 award-reliant organisations.<sup>7</sup> In the retail industry, the most common modern award used by award-reliant organisations was the General Retail Industry Award 2010, also being used by more than six in 10 award-reliant organisations in the industry.<sup>8</sup>

4. This report considers the impact of the FWC decision. It commences with a discussion of the numbers of workers involved and their characteristics. It then considers the financial impact on those workers. 'The impact of the decision' refers not just to the February 2017 decision, though this is by far the major decision. It also includes reference to the earlier decision on the Restaurant Award that also reduced some Sunday penalty rates, and the likely flow-on into the clubs industry, as, in the face of inadequate evidence from the relevant employer bodies, the FWC failed to make changes but invited submissions on either further reviewing weekend penalty rates there or, preferably, abolishing the clubs award and allowing the workers to be covered by the Hospitality Award, where cuts in penalty rates have already occurred. Over a period of time, penalty rates in almost all awards in the retail and hospitality industry either have been or will be reduced, and so this report looks at the retail and hospitality industries as a whole.
5. There is another reason for this approach. Through this report, the analysis depends on the availability of data. ABS industry definitions do not typically correspond identically to awards, though modern awards have a much closer link to ABS-defined awards than was the case under the old award system. Data for Australia are presented and, while some published data for Victoria are available, in other cases estimates for Victoria have had to be inferred from extrapolation of national data. In such instances, the methodology used is explained. It is important to note that ABS data are based on surveys, and these are subject to sampling error that follows a random pattern. Relative sampling error increases as sample size declines, and so for

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<sup>7</sup> [2017] FWCFB 1001 at [695] and [708]

<sup>8</sup> *ibid* at [1425]

all original estimates the standard error of an estimate for Victoria will be considerably larger than (roughly double) the standard error of an equivalent estimate for Australia as a whole. So, while published estimates have been used where available, it does not always follow that we would get more accurate data if every estimate for Victoria were published, compared to using extrapolations from national data. In several national publications, the ABS sometimes seeks to overcome this resultant imprecision by using trended estimates (for example, of state and national unemployment rates or many series in the national accounts). However, most of the series relied on for this report are not trended; exceptions are specified.

6. Also because of sampling error, where possible estimates here have been averaged over three year periods, specifically 2011-13 and 2014-16. This increases the accuracy of estimates: where three (annual) estimates have been averaged, the sampling error is reduced by over two fifths; and where twelve (quarterly) estimates have been averaged, the sampling error is reduced by over seven tenths.
7. The numbers in the tables are more precise than those appearing in the text, as the latter are generally rounded. This rounding reflects the fact that the use of surveys, and subsequently extrapolation in some cases, both introduce inherent sources of imprecision into any estimates. The figures used in the text therefore avoid the false precision that might be inferred from the tables, in which precision is maintained to show the basis of calculations.

## **B Numbers of award-reliant workers and workers in the industries**

### **Retail and hospitality workers**

8. Table 1 shows the number of employees in the various industry subdivisions that made up the retail and hospitality industries between 2011 and 2016 at the national level. On average, through 2014-16, 1.1 million people were employed in the retail industry and 720,000 in accommodation and food services. In retail, the largest industry subdivisions were food retailing (360,000) and 'other store-based retailing' (that is, other than food stores) (570,000). Accommodation and food services

comprised just two subdivisions, of which food services (with 630,000 employed people) was the larger.

**Table 1: Retail and hospitality employees, Australia, 2011-2016**

Year	Food Retailing	Other Store-Based Retailing	Motor Vehicle and Motor Vehicle Parts Retailing	Fuel Retailing	Non-Store Retailing and Retail Commission-Based Buying and/or Selling	Retail Trade, nfd	Total - Retail Trade	Accommodation	Food and Beverage Services	Total - Accommodation and food services
2011	345.6	550.2	82.6	31.0	7.6	26.5	1,043.6	90.4	576.8	667.2
2012	344.5	552.9	76.2	29.5	8.0	28.8	1,040.0	83.1	577.5	660.5
2013	352.9	553.4	79.4	31.1	9.3	44.2	1,070.3	89.4	591.2	680.6
2014	361.9	562.8	86.8	30.4	8.1	45.1	1,095.1	92.3	591.9	684.2
2015	346.9	569.6	88.3	32.3	8.3	48.1	1,093.5	91.7	638.4	730.0
2016	373.2	565.9	86.8	31.7	9.0	37.8	1,104.4	96.7	652.6	749.3
Average 2011-13	347.7	552.2	79.4	30.5	8.3	33.2	1,051.3	87.6	581.8	669.4
Average 2014-16	360.7	566.1	87.3	31.5	8.5	43.7	1,097.7	93.6	627.6	721.2

Source: Unpublished ABS data from Labour Force survey—Australian Bureau of Statistics, Labour Force, Australia; Customised Data Request.

- The number of employees is more relevant than the number of employed persons because only employees might be eligible for penalty rates. However, data on employees are less readily available than those for employed persons. Table 2 shows employed persons at the state and national levels in retail and hospitality, and then estimates the number of employees at the state level in those industries, and assumes that Victoria's share of employees is the same as its share of employed persons in those industries (26.3 per cent in retail, 24.3 per cent in hospitality). It is therefore estimated that the average number of Victorian employees in the retail industry over the period 2014-16 was around 290,000, and in accommodation and food services it was around 175,000.

**Table 2: Retail and hospitality employees and employer persons, Australia and Victoria, 2011-2016**

Year	Australia				Victoria			
	Retail trade		Accommodation and food services		Retail trade		Accommodation and food services	
	Employees	Employed	Employees	Employed	Employees (estd)	Employed	Employees (estd)	Employed
2011	1,043.6	1199.9	667.2	767.1	267.4	307.4	152.2	175.0
2012	1,040.0	1194.5	660.5	757.5	268.2	308.0	157.7	180.8
2013	1,070.3	1217.7	680.6	777.4	269.4	306.5	164.5	188.0
2014	1,095.1	1234.0	684.2	774.4	286.8	323.1	161.5	182.8
2015	1,093.5	1243.3	730.0	823.2	289.0	328.5	177.3	199.9

Year	Australia				Victoria			
	Retail trade		Accommodation and food services		Retail trade		Accommodation and food services	
	Employees	Employed	Employees	Employed	Employees (estd)	Employed	Employees (estd)	Employed
2016	1,104.4	1243.6	749.3	843.8	290.3	326.9	187.4	211.0
Average 2011-13	1,051.3	1,204.0	669.4	767.3	268.3	307.3	158.1	181.3
Average 2014-16	1,097.7	1,240.3	721.2	813.8	288.7	326.2	175.4	197.9

Source: ABS Labour Force Survey: ABS 6291.0.55.003 Labour Force, Australia, Detailed, Quarterly; Table 05. Employed persons by State, Territory and Industry division of main job (ANZSIC); and Australian Bureau of Statistics, Labour Force, Australia; Customised Data Request.

#### Award-reliant workers

10. Across Australia, in May 2016, approximately 24.5 per cent of non-managerial employees were award-reliant, that is, their pay and conditions were determined by the award and they were paid no more than the award. This is shown in Table 3. Amongst female employees, award reliance was as high as 28.9 per cent but amongst males it was 19.6 per cent.
  
11. In the retail industry, award reliance was higher at 34.5 per cent and in accommodation and food services it was higher again at 42.7 per cent. In total, across Australia, 370,000 non-managerial retail employees and 320,000 non-managerial employees in accommodation and food services were reliant on awards. Estimates of the numbers of employees in industries in Table 3 differ from those in Table 1 because the surveys from which they are derived have different approaches: the labour force survey, used in Tables 1 and 2, is a survey of households and the employee, earnings and hours (EEH) survey, used in Tables 3 and 4, is a survey of employers.

**Table 3: Coverage by industrial instruments, by industry, non-managerial employees, Australia, May 2016**

Industry	Method of setting pay				
	Award only	Collective agreement	Individual arrangement	All methods of setting pay	Award coverage %
Mining	np	65.8	np	163.1	Na
Manufacturing	118.5	182.0	370.6	671.0	17.7%
Electricity, gas, water and waste services	6.4	59.1	33.2	98.7	6.5%

Industry	Method of setting pay				
	Award only	Collective agreement	Individual arrangement	All methods of setting pay	Award coverage %
Construction	117.3	131.4	346.4	595.1	19.7%
Wholesale trade	69.7	53.4	291.4	414.4	16.8%
Retail trade	367.6	400.5	297.8	1,065.8	34.5%
Accommodation and food services	316.6	264.9	160.7	742.2	42.7%
Transport, postal and warehousing	50.6	212.4	114.1	377.1	13.4%
Information media and telecommunications	7.9	57.6	78.0	143.5	5.5%
Finance and insurance services	np	154.7	np	368.3	Na
Rental, hiring and real estate services	45.6	16.6	105.7	167.8	27.2%
Professional, scientific and technical services	58.9	70.5	502.1	631.5	9.3%
Administrative and support services	240.7	92.7	239.1	572.4	42.1%
Public administration and safety	118.9	509.6	28.0	656.5	18.1%
Education and training	235.4	572.7	98.5	906.6	26.0%
Health care and social assistance	353.9	676.4	198.8	1,229.1	28.8%
Arts and recreation services	39.9	59.3	53.0	152.1	26.2%
Other services	115.0	36.1	183.8	334.9	34.3%
<b>All industries</b>	<b>2,276.1</b>	<b>3,615.5</b>	<b>3,398.5</b>	<b>9,290.1</b>	<b>24.5%</b>

Source: ABS Cat No 6306.0 DO005201605, Employee Earnings and Hours, Australia, May 2016; Table 4 NON-MANAGERIAL EMPLOYEES, Number of employees, Average weekly total cash earnings, Average weekly total hours paid for, Average hourly total cash earnings—Method of setting pay, Industry, 19 Jan 2017. Np = not published

12. However, we cannot assume that the numbers of award-reliant non-managerial employees in retail and hospitality in Victoria are 26 per cent and 24 per cent respectively of the national estimates, the numbers implied from Table 2, because award reliance in Victoria is, overall, less than nationally. This is shown in Table 4, from which we can calculate that 18.8 per cent of Victorian non-managerial

employees were award-reliant in 2016, compared to the national estimate of 24.5 per cent. This is probably because of the higher rate of coverage by collective agreements in Victoria.<sup>9</sup>

**Table 4: Coverage by industrial instruments, by state, non-managerial employees, Australia, May 2016**

State/ Territory	Award only	Collective agreement	Individual arrangement	All methods of setting pay	Percentage award coverage
New South Wales	937.5	785.4	1,185.4	2,908.3	32.2%
Victoria	447.8	1,046.4	887.5	2,381.6	18.8%
Queensland	479.7	795.1	597.5	1,872.4	25.6%
South Australia	137.9	261.9	193.2	593.0	23.3%
Western Australia	172.5	469.1	408.7	1,050.3	16.4%
Tasmania	60.9	75.3	41.0	177.2	34.4%
Northern Territory	18.7	54.5	35.7	108.8	17.2%
Australian Capital Territory	21.1	128.0	49.4	198.5	10.6%
<b>Australia</b>	<b>2,276.1</b>	<b>3,615.5</b>	<b>3,398.5</b>	<b>9,290.1</b>	<b>24.5%</b>

Source: ABS Cat No 6306.0 DO005201605, Employee Earnings and Hours, Australia, May 2016; Table 5 NON-MANAGERIAL EMPLOYEES, Number of employees, Average weekly total cash earnings, Average weekly total hours paid for, Average hourly total cash earnings—Method of setting pay, States and territories, 19 Jan 2017

13. In Table 5, an estimate is made of the number of award-reliant employees in the Victorian retail and hospitality industries. In effect, the rate of award reliance in each of those industries is estimated as the national rate in that industry minus the difference between the state and national rates for all industries, and those rates of award reliance are then applied to the estimated number of employees. In Victoria, an estimated 80,000 retail workers are award-reliant and almost 70,000 hospitality workers are award-reliant.
14. The validity of this method was checked by referring back to the 2006 EEH survey, from which data on award reliance by state could be obtained. Across all industries, award reliance was 4.5 percentage points higher nationally than in Victoria; in accommodation, cafes and restaurants it was 4.7 percentage points higher nationally than in Victoria; and in retail, it was 2.8 percentage points higher nationally than in

<sup>9</sup> There was a negative correlation,  $r=-.79$ , between award and agreement coverage at the state level, and over time a negative correlation can be observed in national time series observations.

Victoria. Thus, using a lower award reliance estimate for Victoria was validated and although the margins did not exactly equate, using a subtractive rather than a multiplicative approach seemed to give closer results.

**Table 5: Estimating award-reliant workers in Victorian retail and hospitality industries**

	All industries		Retail			Accommodation & food services		
	Employees	Award reliant rate	Employees	Rate	Award reliant	Employee	Rate	Award reliant
Australia	9,290.1	24.5%	1,065.8	34.5%	367.6	742.2	42.7%	316.6
Victoria	2,381.6	18.8%	280.2	28.8% (a)	80.7 (b)	185.6	37.0% (a)	68.7 (b)

Source: Calculated from ABS EEH and Labour Force Survey. (a) Estimated (b) Calculated

### C. Weekend work

15. In Table 6, estimates are made of the numbers of employees who worked Saturdays and Sundays, nationally and in Victoria, in two three-year periods. National estimates come from unpublished labour force survey data. It is assumed that the proportions of Victorians who work weekends are similar to the proportions of Australians. National data indicate that, over 2014-16, an average of 280,000 Australian employees in retail worked Sundays. This represented 25 per cent of retail workers. Of these, slightly more than half worked both Saturday and Sunday, and slightly under half worked Sunday only. Almost half of all retail employees worked at some time on the weekend. In Victoria, it was estimated that something over 70,000 retail employees worked on Sundays.
16. Also over 2014-16, an average of over 270,000 Australian employees in hospitality worked Sundays. This represented around 38 per cent of hospitality workers. Of these, around two thirds worked both Saturday and Sunday, and one third worked Sunday only. Over three fifths of all hospitality employees worked at some time on the weekend. In Victoria, nearly 70,000 hospitality employees worked on Sundays.



**Table 6: Saturday and Sunday work in retail hospitality and all industries, Australia and (estd) Victoria, 2011-2016**

Industry/ Weekend work	Australia				Victoria (estd)	
	Numbers of employees		Proportions of employees		Numbers of employees	
<b>Retail</b>	<b>2011-13</b>	<b>2014-16</b>	<b>2011-13</b>	<b>2014-16</b>	<b>2011-13</b>	<b>2014-16</b>
1 - Worked Saturday	252.52	247.75	24.0%	22.6%	64.5	65.2
2 - Worked Sunday	119.88	134.08	11.4%	12.2%	30.6	35.3
3 - Worked Saturday & Sunday	128.91	146.48	12.3%	13.3%	32.9	38.5
4 - Did not work on weekend	549.99	569.35	52.3%	51.9%	140.4	149.7
Total – all employees	1,051.30	1,097.66	100.0%	100.0%	268.3	288.7
Subtotal – worked Sunday	248.79	280.56	23.7%	25.6%	63.5	73.8
<b>Accommodation and food services</b>	<b>2011-13</b>	<b>2014-16</b>	<b>2011-13</b>	<b>2014-16</b>	<b>2011-13</b>	<b>2014-16</b>
1 - Worked Saturday	156.33	160.33	23.4%	22.2%	36.9	39.0
2 - Worked Sunday	82.86	91.28	12.4%	12.7%	19.6	22.2
3 - Worked Saturday & Sunday	171.08	183.08	25.6%	25.4%	40.4	44.5
4 - Did not work on weekend	259.17	286.48	38.7%	39.7%	61.2	69.7
Total – all employees	669.44	721.16	100.0%	100.0%	158.1	175.4
Subtotal – worked Sunday	253.94	274.36	37.9%	38.0%	60.0	66.7
<b>Other industries</b>	<b>2011-13</b>	<b>2014-16</b>	<b>2011-13</b>	<b>2014-16</b>	<b>2011-13</b>	<b>2014-16</b>
1 - Worked Saturday	813.35	843.70	10.7%	10.7%	205.7	211.6
2 - Worked Sunday	386.18	407.21	5.1%	5.2%	97.8	102.1
3 - Worked Saturday & Sunday	456.34	474.86	6.0%	6.0%	116.7	119.8
4 - Did not work on weekend	5,953.65	6,180.78	78.2%	78.2%	1,497.5	1,555.2

Industry/ Weekend work	Australia				Victoria (estd)	
	Numbers of employees		Proportions of employees		Numbers of employees	
Total – all employees	7,609.51	7,906.55	100.0%	100.0%	1,917.7	1,988.7
Subtotal – worked Sunday	842.51	882.06	11.1%	11.2%	214.5	221.9
<b>All industries</b>	<b>2011-13</b>	<b>2014-16</b>	<b>2011-13</b>	<b>2014-16</b>	<b>2011-13</b>	<b>2014-16</b>
1 - Worked Saturday	1,222.20	1,251.78	13.1%	12.9%	307.1	315.7
2 - Worked Sunday	588.92	632.56	6.3%	6.5%	148.0	159.5
3 - Worked Saturday & Sunday	756.33	804.42	8.1%	8.3%	190.0	202.9
4 - Did not work on weekend	6,762.81	7,036.61	72.5%	72.4%	1,699.1	1,774.7
Total	9,330.25	9,725.37	100.0%	100.0%	2,344.2	2,452.8
Subtotal - Sunday + Sat Sun	1,345.24	1,436.98	14.4%	14.8%	338.0	362.4

Source: Unpublished ABS data from Labour Force survey—Australian Bureau of Statistics, Labour Force, Australia; Customised Data Request

17. It is difficult to know how many retail or hospitality employees working on Sundays are reliant on awards. This is because data on award coverage and weekend work are from different sources, and we cannot assume that weekend workers have the same likelihood of being award-reliant<sup>10</sup> but in 2012, 8.8 per cent of managers, but 16.9 per cent of workers in other occupations, usually worked shift-work. Only 5.4 per cent of shift-workers were managers, but 10.8 per cent of non-shift-workers were managers.<sup>11</sup>

18. In the absence of better information, it is probably appropriate to assume a range for award reliance of Sunday workers in retail and hospitality. In retail, award reliance of 35 per cent or so would imply between 100,000 and 125,000 people. In

<sup>10</sup> ABS Cat No 6306.0, Employee Earnings and Hours, Australia.

<sup>11</sup> ABS, Cat No 6342.0, Working Time Arrangements, Australia, November 2012.

hospitality, award reliance of 43 per cent or so could imply between 120,000 and 145,000 people.

19. As award coverage in Victoria is likely to be lower, the likely range of award coverage for employees working on Sundays is, by the same method, 29 per cent or so and 37 per cent or so in hospitality (at least 20,000 employees in each industry).
20. The total numbers affected over the medium term are likely to be higher. The Australian Work and Life Index (AWALI) survey found that more than half (57%) of retail industry employees working 'anti-social' hours received premiums. The former number is considerably greater than the proportion of award-reliant employees in the retail industry (35 per cent), and that is before allowing for the fact that some employees entitled to penalty rates are not paid them (a matter discussed in the next section). Thus, many retail employees entitled to penalty rates are not covered by awards but by collective agreements or individual arrangements. We return to that issue later in the report.

#### **D. The effects of award non-compliance**

21. We can distinguish between the 'paid' and the 'unpaid' effects of the FWC decision. For employees in the retail and hospitality sector, the FWC represents a reduction in their entitlement. However, not all employees are paid that entitlement.<sup>12</sup> So, for some employees, the reduction in Sunday penalty rates represents a reduction in the amounts they are entitled to and paid, while for others it represents a reduction in their entitlements but not in how much they are paid.
22. In its decision, the FWC referred to several investigations or audit campaigns by the Fair Work Ombudsman (FWO) from 2010 that quantified the discovered rate of award non-compliance amongst establishments.<sup>13</sup> The results are tabulated in Table

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<sup>12</sup> See next footnote.

<sup>13</sup> Fair Work Ombudsman, *'National Hospitality Campaign 2012–2015: Accommodation, pubs, taverns and bars'*, November 2013, <http://www.fairwork.gov.au/ArticleDocuments/714/National-hospitality-campaign-report.pdf.aspx>; *'National hospitality industry campaign report 2014–2015: Restaurants, Cafes and Catering (Wave 2 Report)'*, June 2015, <http://www.fairwork.gov.au/ArticleDocuments/714/wave-2-restaurants-cafes-catering-industries-national-hospitality-industry-campaign-report.docx.aspx>; *'National hospitality industry campaign report 2015–2016: Takeaway foods (Wave 3 Report)'*, March 2016,

7. Around a quarter of retail establishments breached awards, as did higher proportions in hospitality: 30 per cent of pubs, taverns and bars, 35 per cent of accommodation, 58 per cent of Restaurants, Cafes and Catering establishments and 67 per cent of take away food establishments. In each case where splits were available, the proportion of establishments engaged in ‘wages contraventions’ was two to three times larger than the number of ‘penalties and loadings’ contraventions. That is, for most employers breaching awards, the problem was not that penalty rates were too ‘complex’; it was simply that they did not want to pay the relevant wages. High proportions of contraventions, however, did not fit into either of these categories, and often related to record keeping. Such breaches, which perhaps appearing to be minor in character, made it impossible to know whether and how many employees were not receiving award wages or penalty rates. That said, it seems likely that the proportions of employees not receiving award entitlements in those industries is lower than the proportions of establishments recording breaches, as breaches appear more likely to occur in smaller establishments, and it does not seem likely that every employee in every establishment breached was receiving sub-award wages.
23. The higher rates of non-compliance in hospitality probably relates in part at least to the ethnic composition of the workforce and the potential for exploitation of workers with a non-English speaking background, including through ‘co-ethnicity’.<sup>14</sup> Non-compliance is very high in restaurants and other food outlets where the workers are from ethnic backgrounds and of the same ethnicity as the owners or

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<http://www.fairwork.gov.au/ArticleDocuments/714/hospitality-campaign-wave-3-takeaway-foods-report.docx.aspx>; *National retail industry campaign report 2010–2011*, November 2011, <http://www.fairwork.gov.au/ArticleDocuments/714/Retail-Industry-Campaign-Final-Report.pdf.aspx>; *National pharmacy campaign report 2012–2013* December 2013, <http://www.fairwork.gov.au/ArticleDocuments/714/National-Pharmacy-Campaign-Report.docx.aspx>; all cited in Fair Work Commission, *4 yearly review of modern awards – Penalty Rates*, 23 February, [2017] FWCFB 1001, [2073-7].

<sup>14</sup> Selvaraj Velayutham, ‘Precarious experiences of Indians in Australia on 457 temporary work visas’, *Economic and Labour Relations Review*, 24(3), 340-361; Maria Cristina Morales, ‘Ethnic Niches, Pathway to Economic Incorporation or Exploitation? Labor Market Experiences of Latina/os’, PhD thesis, Texas A&M University, 2014; Stephen Clibborn, ‘Why undocumented immigrant workers should have workplace rights’, *Economic and Labour Relations Review*, 26(3), 2015, 465-473.

managers.<sup>15</sup> Compared to their incidence in the population, migrants from Asian countries (with the slight exception of Chinese migrants) are under-represented in the retail industry, but over-represented in accommodation and food services.<sup>16</sup> Australia is not unique in its industry pattern: American data indicate that hospitality and retail employees, along with agricultural, forestry and fishing employees, are the most likely of those from any industries to experience minimum wage violations.<sup>17</sup>

24. Another source of data on award breaches specifically in Victoria is a recent report by the Young Workers Centre.<sup>18</sup> It is based on a survey of 999 employees but unfortunately cannot be considered representative because of the non-random method of recruitment of participants. It found that one in five young workers, including one in five young retail workers, were receiving less than the minimum wage. An unidentified, higher proportion would have been receiving less than the relevant award wage. It also found that 76 per cent worked 'unsociable hours', including 66 per cent who worked weekends, but that amongst those 43 per cent said they did not receive penalty rates for that work. However, we do not know how many of those would have been entitled under their industrial instrument to penalty rates. The Young Workers Centre survey confirms that many young workers do not receive their award entitlements, but is of less value in estimating the extent of non-compliance.

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<sup>15</sup> Iain Campbell, Martina Boese, and Joo-Cheong Tham, 'Inhospitable workplaces? International students and paid work in food services', *Australian Journal of Social Issues*, 51 (3), 2016, 279-298.; Adele Ferguson, 'Blackmail, extortion and slavery at a restaurant near you', *Sydney Morning Herald*, 25 March 2017; 'Ombudsman cautions against exploitation of overseas workers of their own', *Workplace Express*, 7 February 2017; Senate Economic Reference Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, Senate, Canberra, 2016, p223.

<sup>16</sup> Department of Immigration and Border Protection, *The Place of Migrants in Contemporary Australia*, Strategic Policy, Evaluation and Research Branch, DIBP, Canberra, 2014, Table 5 p18.

<sup>17</sup> David Cooper and Teresa Kroeger, 'Employers steal billions from workers' paychecks each year', Economic Policy Institute, Washington DC, May 2017, pp25,37.

<sup>18</sup> Sarah Bright, Keelia Fitzpatrick and Amy Fitzgerald, 'Young Workers Snapshot: The Great Wage Ripoff', Young Workers Centre, Melbourne, 2017.

**Table 7: Award non-compliance identified by Fair Work Ombudsman (proportions of establishments)**

<b>Award</b>	<b>Non-compliant (all)</b>	<b>Wages contraventions</b>	<b>Penalties and loadings contraventions</b>
Retail Industry 2010-11	26%		
Pharmacy 2012-13	25%	14%	6%
Pubs, Taverns and Bars 2012-14	30%		
Accommodation 2012-14	35%	19%	7%
Restaurants, Cafes and Catering 2012-14	58%		
Takeaway Foods 2012-14	67%	30%	10%

Source: See footnote 13.

25. For the purposes of estimating paid and unpaid effects of the decision, we assume that the proportion of employees in an industry receiving less than their entitlements can be estimated as the sum of wages and penalties contraventions estimated in the FWO data, plus half the gap between that sum and all contraventions (that is, we assume that half of other firms with non-compliance problems such as inadequate records would be in firms that pay below-award wages), multiplied by two-thirds. The last allows for the fact that non-compliance will be higher in smaller firms, and that in some non-compliant firms only a small number of award employees will receive less than their award penalty rate, whereas in others it would be all award employees. For 'food services' we average the non-compliance rates in takeaway foods and restaurants, cafes and catering, and then discount the figures by that factor. For retail trade we use the figures for pharmacy trade, a group within the retail trade division, as aggregate non-compliance there was very similar to that for the retail industry award. These numbers generate necessarily rough approximations at best. However, this method implies that around 15 per cent of penalty rates reductions for retail workers were unpaid, as were 20 per cent in accommodation and 33 per cent in food services, producing a weighted average of a little below 32 per cent in accommodation and food services. These estimates are lower than estimates of non-payment of penalty rates in the Young Workers Centre survey (slightly over 40 per cent) but, as mentioned, that survey did not identify whether surveyed workers were entitled to penalty rates under their instruments anyway, and may also have suffered from some selection bias. Overall,

the above estimates are probably in a plausible range given the difficulty of making estimates in this area.

26. Bearing in mind the assumptions behind these estimates, it seems likely that, nationally, between 85,000 and 100,000 award-reliant retail employees will experience paid reductions in Sunday penalty rates, and from 15,000 to 20,000 award-reliant retail workers will experience unpaid reductions in Sunday penalty rates. Similarly, between 80,000 and 100,000 award-reliant hospitality workers nationally would likely experience paid reductions in in Sunday penalty rates, and from 35,000 to 45,000 award-reliant hospitality workers would experience unpaid reductions in Sunday penalty rates.
27. In Victoria, probably between 17,000 and 25,000 award-reliant retail employees would experience paid reductions in Sunday penalty rates, and from 3,000 to 5,000 award-reliant retail workers experience unpaid reductions in Sunday penalty rates. Similarly, between 15,000 and 20,000 award-reliant Victorian hospitality workers likely probably experience paid reductions in in Sunday penalty rates, while from 6,000 to 10,000 award-reliant hospitality workers experience unpaid reductions in Sunday penalty rates.

#### **E. Gender**

28. Table 8 shows the gender composition (that is, total employment, the proportion of female employment, and the estimated number of male and female employees) in each relevant industry divisions and subdivision at the national level, for the two trienniums 2011-13 and 2014-16. At the major industry level, employment is also disaggregated between full-time and part-time. Table 8 also shows, in the right hand column, an extrapolated estimate of female employment in Victoria, based on those national estimates and the average share of Victoria in national employment in the retail and accommodation and food services industries. For example, it is estimated that Victorian female employment was around 180,000 in retail in 2014-16 and 70,000 in accommodation and food services.

29. Perhaps of greatest note is that female employment is considerably higher among part-time than full-time employees in both sectors, being between 60 and 70 per cent amongst part-time employees in both sectors in 2014-16, but only 40 to 45 per cent amongst full-timers. We can also see that female employment is low in motor vehicle and parts retailing, and below half in fuel retailing, but above half in all other subdivisions, and the highest in the largest retail subdivision, 'other' (i.e. non-food) store-based retailing.

**Table 8: Employment by gender by hours worked, 2011-2016 ('000)**

Industry division or subdivision	Form of employment and years	Australia				Estimated Victoria
		Total employment	Percentage of employed people who are female	Male employment	Female employment	Female employment
Retail Trade: Total	2011-13	1204.0	56.5%	523.6	680.4	178.9
	2014-16	1240.3	55.5%	552.3	688.0	180.9
	Full-time employment					
	2011-13	619.1	43.2%	351.8	267.3	70.3
	2014-16	631.2	42.6%	362.3	268.9	70.7
	Part-time employment					
	2011-13	584.9	70.6%	171.8	413.1	108.6
	2014-16	609.1	68.8%	190.0	419.1	110.2
Motor Vehicle/ Parts Retailing: Total	2011-13	91.8	20.9%	72.6	19.2	5.0
	2014-16	97.7	21.6%	76.6	21.1	5.5
Fuel Retailing: Total	2011-13	35.3	46.6%	18.9	16.5	4.3
	2014-16	36.0	47.4%	18.9	17.1	4.5
Food Retailing: Total	2011-13	379.5	53.4%	176.7	202.8	53.3
	2014-16	387.3	51.8%	186.8	200.5	52.7
Other Store-Based Retailing: Total	2011-13	638.5	63.9%	230.7	407.8	107.3
	2014-16	651.4	63.0%	241.0	410.4	107.9
Non-Store Retailing & Retail Commission-Based Buying and/or Selling: Total	2011-13	17.5	58.5%	7.3	10.2	2.7
	2014-16	16.3	54.6%	7.4	8.9	2.3
Retail Trade nfd: Total	2011-13	41.5	57.9%	17.5	24.0	6.3
	2014-16	51.5	58.3%	21.5	30.0	7.9
Accommodation & Food Services: Total	2011-13	767.3	55.3%	342.8	424.5	103.2
	2014-16	813.8	54.6%	369.1	444.7	108.1
	Full-time					
	2011-13	328.7	45.4%	179.5	149.2	36.3
	2014-16	336.3	45.2%	184.1	152.2	37.0
	Part-time					
	2011-13	438.7	62.8%	163.3	275.4	66.9



Industry division or subdivision	Form of employment and years	Australia				Estimated Victoria
		Total employment	Percentage of employed people who are female	Male employment	Female employment	Female employment
		2014-16	477.5	61.3%	185.0	292.5
Accommodation: Total	2011-13	105.0	62.6%	39.3	65.7	16.0
	2014-16	113.8	60.5%	45.0	68.8	16.7
Food services: Total	2011-13	662.4	54.2%	303.5	358.9	87.2
	2014-16	700.0	53.7%	324.2	375.8	91.3

Source: Victorian estimates (last column) are Australian estimates multiplied by 26.3% (Retail) or 24.3% (Accommodation and food services). nfd = Not further defined.

30. Table 9 contains data at a more aggregated industry level but showing employment status as well and is restricted to employees and to the triennium 2011-13. For this table, 'casual' means 'without paid leave entitlements' and 'permanent' means 'with paid leave entitlements'. Most managers, being paid above the award rate, would have been permanent full-time employees. While males made up approximately 55 per cent of permanent full-time employees in both sectors, females dominated permanent part-time and casual employment in both, comprising 61 to 66 per cent of casual employees and 69 to 76 per cent of permanent part-time employees.

**Table 9: Employment by gender by hours worked and employment status, 2011-2013 ('000)**

Industry	Form of employment	Australia				Estimated Victoria
		Total employees	Proportion of employed people who are female	Male employees	Female employees	Female employees
Retail trade	Permanent full-time	465.2	44.2%	259.4	205.8	54.1
	Permanent part-time	189.9	76.1%	45.5	144.4	38.0
	Casual	428.6	65.8%	146.7	281.9	74.1
Accommodation and food services	Permanent full-time	177.8	45.2%	97.5	80.4	19.5
	Permanent part-time	62.9	68.6%	19.8	43.1	10.5
	Casual	434.2	61.1%	168.9	265.3	64.5

Source: ABS Cat No 6105.0 Australian Labour Market Statistics, Table 4. Employment Type: Employed persons by Sex, Full-time/part-time and Industry (ANZSIC 2006), November 2008—November 2013. Data relate to November each year only. Hence, there may be discrepancies with other tables.

## F. Profile of Saturday and Sunday workers

31. This section considers the characteristics of Saturday and Sunday employees in the retail and hospitality sectors. The data are based on estimates over the triennium 2011-13 using unpublished data from the ABS Forms of Employment Survey (FOES), conducted in November each year over several years to 2013. As the data only relate to November, there may be small discrepancies with the earlier data on Saturday and Sunday workers (Table 6) extracted from each quarter. The data here exclude self-employed and owner-managers of incorporated or unincorporated enterprises.
32. Table 10 shows the gender breakdown of people who 'usually or sometimes' worked Saturdays or Sundays in the retail, hospitality and other industries across Australia. (People who worked both Saturdays and Sundays would appear in both halves of the table.) The table shows that, in retail trade, 57 per cent of Saturday workers, and 60 per cent of Sunday workers, were female. In accommodation and food services, 53 per cent of Saturday workers, and 54 per cent of Sunday workers, were female. In total, 57 per cent of Sunday workers in retail and hospitality were female.

**Table 10: Saturday and Sunday workers by gender and industry, 2011-13, Australia**

Industry	Saturday workers				Sunday workers			
	Males	Females	Persons	Female	Males	Females	Persons	Female
Retail Trade	134,788	179,280	314,068	57.1%	77,490	118,231	195,721	60.4%
Accommodation and Food Services	111,586	127,302	238,889	53.3%	79,945	93,544	173,489	53.9%
Other Industries	522,197	343,433	865,630	39.7%	287,635	216,827	504,463	43.0%
All Industries	768,572	650,015	1,418,587	45.8%	445,071	428,602	873,673	49.1%

Source: ABS Forms of Employment Survey - 6359.0: Customised Report, Table 3, Saturday and Sunday: Employees (excluding OMIE and OMUE), by industry, sex and whether had children aged under 15 years, Reference period: 2011, 2012, and 2013.

33. The rest of this section discusses other characteristics of Saturday and Sunday workers in retail and hospitality, using the FOES data. In retail trade, around 40 per cent of employees were casuals (employees without paid leave entitlements), while 60 per cent were permanent (employees *with* paid leave entitlements). This compares with 64 per cent who are casuals in accommodation and food services, 18 per cent casuals in other industries and 24 per cent casuals across all industries.

34. All up, around 29 per cent of retail employees usually or sometimes worked on a Saturday, 49 per cent usually did not work on a Saturday, and for 22 per cent work hours varied. This 29 per cent regular Saturday workers compared with 35 per cent in accommodation and food services, and 15 per cent in all industries. Some 34 per cent of casuals in the retail trade usually worked on Saturdays, 38 per cent usually did not. Amongst permanents in retail, 26 per cent usually worked Saturdays, 57 per cent usually did not.
35. Around 18 per cent of retail employees and 26 per cent of hospitality employees usually or sometimes worked on a Sunday, 60 per cent in retail and 42 per cent in hospitality usually did not work on a Sunday, and for 22 per cent in retail and 33 per cent in hospitality work hours varied.
36. Some 24 per cent of casuals (technically, employees without paid leave entitlements) in the retail trade usually worked on Sundays, 58 per cent usually did not. Amongst permanents in retail (technically, employees *with* paid leave entitlements), 15 per cent usually worked Sundays, 69 per cent usually did not. Some 26 per cent of casuals in hospitality usually worked on Sundays, 40 per cent usually did not. Amongst permanents in hospitality, again 26 per cent usually worked Sundays, 45 per cent usually did not.
37. Retailing accounted for 22 per cent of employees usually or sometimes working on Saturdays, and for 20 per cent of employees usually or sometimes working on Sundays. Accommodation and food services accounted for another 17 per cent of people usually or sometimes working on Saturdays, and 18 per cent of people usually or sometimes working on Sundays. So a majority of people (over three fifths) working on Saturdays and Sundays were not in those two industries.
38. Retailing also accounted for: 19 per cent of permanent employees usually or sometimes working on Saturdays, and 18 per cent on Sundays; and 28 per cent of casual employees usually or sometimes working on Saturdays, and 30 per cent on Sundays. Hospitality accounted for: 10 per cent of permanent employees usually or sometimes working on Saturdays, and 12 per cent on Sundays; and 29 per cent of

casual employees usually or sometimes working on Saturdays, and 33 per cent on Sundays. So a majority of *Sunday casuals* were in those two industries.

39. Retailing accounted for 42 per cent of full-time students (including similar proportions of tertiary and school students) under 25 years old usually or sometimes working on Saturdays, and 44 per cent on Sundays. Accommodation and food services accounted for another 33 per cent (Saturday) and 35 per cent (Sunday).
40. Amongst people employed in retailing, 21 per cent were students under 25 years. This included: 10 per cent who were full-time school students; and 11 per cent who were full-time tertiary students (studying at a TAFE, university or equivalent) aged under 25 years. Overall, those aged under 25 accounted for around 39 per cent of retail employees, those aged 25 and over accounted for 61 per cent of retail employees. The ABS data tells us how many people were aged over 25 years, but not how many of them were full-time students. However, any full-time student over 25 years is likely to be going back to university after a period of work and supporting themselves or partly reliant on their partner.
41. Amongst casual workers in retail, 44 per cent were full-time students under 25 years. (This included 22 per cent who were school students and 22 per cent who were tertiary students.) Amongst permanent retail employees, only 6 per cent were full-time students under 25. Amongst casual workers in retail, 39 per cent were 'dependent students', while 17 per cent were parents with dependents (13 per cent in couples, 4 per cent lone parents). It seems plausible that the 5 per cent difference between the 39 per cent dependent students figure and 44 per cent full-time students under 25 figure is due mainly to school students who live away from home. That is, over one fifth of school students who work in casual jobs in retail are living away from home. For the ABS, a 'dependent student' is defined as 'dependent' as a result solely of their relationship to other people in the household. If someone is a full-time student and living in the same household as their parents, they are a 'dependent', regardless of what their income is, whether they are paying rent, and so on. It is likely that many 'dependent' students are not really 'dependent', though many probably get an implicit subsidy through rent reductions or waivers.

42. Amongst retail employees who usually worked on Sundays: 34 per cent were 'dependent' students; 19 per cent were parents; 12 per cent were non-dependent children; 21 per cent were family members without dependents; and 13 per cent were non-family members or persons living alone.
43. In summary: a majority of tertiary students who are employed work in either the retailing or hospitality industries. However, this did not mean that most people who work in those industries are tertiary students, let alone that they are not in need. The majority of retail employees who would be affected by changes to weekend penalty rates are *not* students, even though a significant minority are students. Amongst those working on Saturdays and Sundays in retail trade, students are disproportionately found amongst casuals, but there is still a substantial minority of weekend casuals who are not students and who are in turn dependent on the money (as are many students).<sup>19</sup> Changes in penalty rates in retail and hospitality therefore affect not only tertiary students but also a significant number of other people who are likely to be dependent on retail or hospitality employment as their sole source of income.

#### **G. Regional aspects**

44. Table 11 shows employment in the retail and hospitality industries in various regions of Victoria in November 2015, and the proportion of total employment in that region signified by those industry employment levels. Data are presented for nine metropolitan regions and eight non-metropolitan regions. The figures differ from most in this report in that they are based on trend estimates, a method used by the ABS (and in his case, the Department of Employment, which is the source of the estimates) to smooth out fluctuations arising from one-off events and sampling error. They can therefore be considered to be quite robust, despite the small cell sizes. Table 11 shows that approximately 24 per cent of Victorian employment in

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<sup>19</sup> Emmaline Bexley, Suzanne Daroesman, Sophie Arkoudis and Richard James, *University student finances in 2012 A study of the financial circumstances of domestic and international students in Australia's universities*, Centre for the Study for Higher Education, University of Melbourne and Universities Australia, Melbourne, July 2013.

both industries — a total of 126,000 jobs across retail and hospitality—is located outside Melbourne.

45. It is likely that the coverage of awards will vary between regions. It is known that businesses in regional areas tend to be smaller on average than those in metropolitan areas. For example, in Melbourne 6.1 per cent of employing businesses had 20 or more employees in 2015, but in non-metropolitan Victoria only 4.8 per cent of non-employing businesses had 20 or more employees.<sup>20</sup> Award reliance is closely related to employer size, being just 21 per cent amongst employers with 20 or more employees nationally, but 35 per cent amongst employers with fewer than 20 employees.<sup>21</sup> It therefore seems likely that award reliance would be higher in non-metropolitan Victoria than in Melbourne, but by how much in retail and hospitality is difficult to estimate.
46. For both retail trade and accommodation and food services, employment in those industries is a higher proportion of regional employment outside of Melbourne than it is inside Melbourne. Between them, the two industries are 18.8 per cent of employment outside of Melbourne and 17.4 per cent within Melbourne. Amongst the regions, retail trade has the highest proportion of regional employment in Ballarat (where it is 14.2 per cent of regional employment), followed by Mornington Peninsula (13.4 per cent), North-east Melbourne (12.3 per cent) and Bendigo (12.0 per cent). Accommodation and food services has the highest proportion of regional employment in Warrnambool and South West (8.2 per cent of regional employment) followed by Inner Melbourne and Northwest Victoria (both 7.9 per cent) and Latrobe/Gippsland (7.5 per cent).

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<sup>20</sup> ABS Cat No 1410.0, DATA BY REGION, 2011-16, ECONOMY AND INDUSTRY, Australia, State and Territory, Statistical Area Levels 2-4, Greater Capital City Statistical Area, 2011-2016

<sup>21</sup> ABS, 63060DO005\_201605 Employee Earnings and Hours, Australia, May 2016, Table 7 NON-MANAGERIAL EMPLOYEES, Number of employees, Average weekly total cash earnings, Average weekly total hours paid for, Average hourly total cash earnings—Method of setting pay, Employer size

**Table 11: Employment (trend estimates) in hospitality by region, Victoria, November 2015 ('000)**

Victorian region	Employment ('000)		Share of regional employment	
	Retail Trade	Accommodation and Food Services	Retail Trade	Accommodation and Food Services
<b>Victoria</b>	<b>334.8</b>	<b>197.3</b>	11.3%	6.6%
<i>Greater Melbourne</i>	253.3	146.1	11.0%	6.3%
Melbourne - Inner	25.6	27.6	7.3%	7.9%
Melbourne - Inner East	20.8	12.2	11.0%	6.4%
Melbourne - Inner South	20.4	10.6	9.2%	4.8%
Melbourne - North East	30.2	14.5	12.3%	5.9%
Melbourne - North West	17.6	9.2	10.8%	5.6%
Melbourne - Outer East	32.0	15.2	11.9%	5.7%
Melbourne - South East	39.0	21.3	10.9%	6.0%
Melbourne - West	37.8	21.4	10.3%	5.8%
Mornington Peninsula	18.6	7.9	13.4%	5.7%
<i>Rest of Victoria</i>	78.7	47.6	11.7%	7.1%
Ballarat	10.2	4.5	14.2%	6.3%
Bendigo	8.1	4.2	12.0%	6.2%
Geelong	14.5	7.2	11.6%	5.8%
Hume	7.9	5.4	9.2%	6.3%
Latrobe - Gippsland	13.5	9.4	10.8%	7.5%
Victoria - North West	7.2	5.3	10.7%	7.9%
Shepparton	6.6	3.3	10.7%	5.4%
Warrnambool and South West	6.4	5.3	9.9%	8.2%

Source: Department of Employment, Employment projections for the five years to November 2020: Regional employment by ANZSIC Industry, Canberra, 2016.

#### **H. Indirect impact on workers under collective agreements or individual arrangements**

47. The penalty rates decision directly affects those workers in retail and hospitality on awards, but it also is likely to affect the pay of workers in retail and hospitality on other instruments, that is on individual arrangements and collective agreements. (We refer to these two groups as being 'non-award' workers, but this does not imply they do not have an underpinning award—indeed, all would have one, thanks to award modernization.) This effect occurs through two mechanisms. First, some 'non-award' workers will be themselves receiving penalty rates, under the terms of either their collective agreement or their individual contract. A collective agreement

remains in force until it is cancelled or replaced, and an individual contract continues until it is renegotiated, unilaterally changed by management or is superseded by award movements. Still, it is likely that the lower penalty rates will form the reference point for future negotiations when new agreements or contracts are negotiated.

48. Second, even when penalty rates are absorbed into loaded rates in a registered enterprise agreement and not directly paid, they form part of the Better Off Overall Test (BOOT) below which enterprise agreements cannot legally pay. When award penalty rates fall, the benchmark for the BOOT test also falls and so, in the long run, wage increases are likely to be lower. Likewise, even if an individual contract does not explicitly provide for penalty rates, a worker on an individual contract cannot receive less than they would be entitled to under the award. So, when penalty rates fall, future individual contracts can provide for lower wages than would otherwise be the case.
49. It might be argued that wage stickiness would prevent this from occurring. In the short-term this *might* be the case, but not in the medium to long term. It is clear that the bargaining power of employees is low, as evidenced by the low rates of growth of wages—including the consistently lowest growth in the wage price index since the series began in the 1990s.<sup>22</sup> It is likely that, unless there is a substantial increase in employee bargaining power, over the medium to longer term the lower penalty rates in awards will be reflected in lower rates of wages growth for workers for whom award rates are still relevant.
50. We deal with the two forms of indirect effects in turn. However, the numbers that follow in this section are point estimates, produced for the purposes of calculating the bottom line ranges in the next section. These point estimates should not be taken as indicating the precision that such estimates might imply and the point ranges in the section that follows are better indications of the true ranges.

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<sup>22</sup> ABS Cat No 6345.0 - Wage Price Index, Australia, March 2017.



51. We can first attempt to estimate the proportion of 'non-award' employees (that is, employees covered by collective agreements or individual arrangements) in receipt of penalty rates. The steps are shown in Table 12. (The numbers in the text have the appearance of greater precision here than elsewhere in the text, but that is to enable the reader to follow the steps in Table 12; at the end of this passage preferred ranges are used.)
52. From the EEH survey we know that 367,600 non-managerial retail employees are award-reliant, as are 316,600 hospitality workers. From ABS labour force survey data we find that a minimum of 25 per cent of retail employees, and of 38 per cent of hospitality employees, work on Sundays. Assuming these two variables are independent, this gives us estimates of 91,900 award-dependent non-managerial retail employees working on Sundays, and 120,300 award-dependent non-managerial hospitality employees working on Sundays. Earlier we estimated that roughly 15 per cent of retail workers, and 32 per cent of hospitality workers, do not receive their award entitlements. This implies that 78,100 award-dependent non-managerial retail employees working on Sundays have a paid penalty rate entitlement, and that 13,800 award-dependent non-managerial retail employees working on Sundays have a penalty rate entitlement that is unpaid. Similarly, 81,800 award-dependent non-managerial hospitality employees working on Sundays would have a paid penalty rate entitlement, and 38,500 award-dependent non-managerial hospitality employees working on Sundays have a penalty rate entitlement that is unpaid.
53. AWALI estimates that 56.7 per cent of retail employees working unsociable hours receive penalty rates, as do 52.2 per cent of hospitality employees. The relevant AWALI table includes both managerial and non-managerial employees. We estimate that 280,300 retail employees work Sundays, as do 291,700 hospitality employees. Assuming that the likelihood of receiving penalty rates is the same for Sunday workers as for other employees working unsociable hours, this gives us an estimate of 158,900 retail employees, and 152,200 hospitality employees, who receive penalty rates for working on Sundays. As we already know that 78,100 award-dependent non-managerial retail employees working on Sundays are paid penalty

rates, as are 81,800 award-dependent non-managerial hospitality employees working on Sundays, subtraction gives us approximately 80,800 'non-award' retail employees and 70,400 'non-award' hospitality employees receiving penalty rates for Sunday work. In the absence of any information to the contrary, we distribute these between collective agreements and individual arrangements in direct proportion to those instruments' overall coverage with each of those industries. (Hence we estimate that of the 80,800 'non-award' retail employees receiving penalty rates for Sunday work, 46,400 are on collective agreements and 34,500 are on individual arrangements. Similarly, of the 70,400 'non-award' hospitality employees receiving penalty rates for Sunday work, 43,800 are on collective agreements and 26,600 are on individual arrangements.)

54. Second, there is the more difficult problem of estimating the flow-on into collective agreements and individual contract negotiations that do not explicitly provide for penalty rates. Clearly, some agreements and contracts will be heavily influenced by award developments, but it is likely that, in at least some industries, agreements and contracts will be so high above the relevant awards as not to be influenced by them. Nationally, average earnings under awards are \$29.60 per hour, while average earnings under collective agreements are a third higher, at \$39.60 per hour. Average earnings under individual arrangements are also higher, at \$38.50 per hour.<sup>23</sup>
55. For many (but by no means all) workers on enterprise agreements and individual arrangements outside retail and hospitality, therefore, it seems that actual rates of pay would be so much higher than awards as to not be normally influenced by award outcomes. (This situation might not continue, if the 'increasing trend for employers to apply to the Fair Work Commission to terminate enterprise agreements' and revert to award rates after the agreements expire, in order to 'increas[e] the employer's bargaining power',<sup>24</sup> becomes more widespread.)

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<sup>23</sup> ABS Cat No 6306.0, Table 7 NON-MANAGERIAL EMPLOYEES, Number of employees, Average weekly total cash earnings, Average weekly total hours paid for, Average hourly total cash earnings—Rate

<sup>24</sup> Melissa Harvey and Clare Raimondo, Employment law: What to expect in 2017, HWL Ebsworth Lawyers, Adelaide, 15 February 2017, <http://www.hwlebsworth.com.au/latest-news-a-publications/publications/workplace-relations-and-safety/item/2297-employment-law-what-to-expect-in->

56. In retail and hospitality, regardless, this gap between rates in and outside awards does not seem to hold for collective agreements. In retail trade, average earnings for non-managerial employees under awards are just \$23.60 per hour (this includes the effects of penalty rates), and average earnings under collective agreements are barely any higher, at \$24.20 per hour. Likewise, in hospitality, average earnings under awards are also just \$23.60 per hour, and average earnings under collective agreements are in fact lower at \$22.00 per hour. It appears that, in both industries, collective agreements pay little or nothing more than awards, an impression reinforced by the recent cancellation of a large retail agreement because of problems satisfying the BOOT.<sup>25</sup> Hence, changes to penalty rates in awards are highly likely to affect collective agreements through the operation of the BOOT.
57. Given the low wage rates in collective agreements in retail and hospitality, we assume in Table 12 that all collective agreements are indirectly influenced by the decision, either because they contain penalty rates or because penalty rates in retail and hospitality are relevant to the BOOT there. Assuming again that 25 per cent of retail workers on collective agreements work Sundays, and the same for 38 per cent of hospitality workers on collective agreements, this means that 100,100 non-managerial Sunday employees in retail and 101,700 non-managerial Sunday employees in hospitality are on collective agreements indirectly influenced by penalty rates in awards. Of the 101,100 in retail, we have already estimated that 46,400 are on penalty rates and hence the other 53,800 are on retail collective agreements in which Sunday penalty rates are relevant to the BOOT. Similarly, of the 107,100 in hospitality, we have already estimated that 43,800 are on penalty rates and hence the other 56,800 are on hospitality collective agreements in which Sunday penalty rates are relevant to the BOOT.

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2017.html. It is also referred to as an 'emerging trend' by the AiGroup (<http://omnovia.redbackconferencing.com.au/landers/page/fbd83a>, March 2017) and a 'new trend' in Stephen Long, 'Shifting the risk of doing business from companies onto workers', *Lateline*, Australian Broadcasting Corporation, 10 August 2016, <http://www.abc.net.au/lateline/content/2016/s4515902.htm>

<sup>25</sup> [2016] FWCFB 2887

58. Individual arrangements are a different matter, and for non-managerial employees these pay an average of \$30.00 per hour in retail (27 per cent above the award) and \$26.80 per hour (13 per cent above the award) in hospitality. We have no published data on earnings distributions in retail or hospitality. The national all-industry earnings distribution tells us that 23 per cent of full-time non-managerial employees were on weekly incomes above \$1900 per week in May 2016, placing them above 89 per cent of award-reliant non-managerial employees.
59. For estimating purposes we can assume that all managerial employees on individual contracts in retail and hospitality are not affected by penalty rates (this is not quite true in every case, for example pharmacy managers, but they are a small proportion of managers). For estimating purposes we also assume that one quarter of non-managerial employees in retail and hospitality are neither directly nor indirectly affected by changes in penalty rates. This is a somewhat conservative estimate (that is, the number is likely lower as the distribution of earnings of employees on individual contracts is probably closer in the retail and especially the hospitality industries to the distribution of earnings of employees on awards, given the smaller gaps in average earnings), so if anything it will understate the effects of the penalty rates decision. Nonetheless, assuming again that 25 per cent of retail employees on individual arrangements work Sundays as do 38 per cent of hospitality employees, there would be approximately 74,500 non-managerial Sunday retail employees on individual arrangements and 61,100 non-managerial Sunday hospitality employees on individual arrangements. Assuming as above that the actual pay rates for one quarter of each group are not influenced by variations to the award penalty rates, then 55,800 non-managerial Sunday retail employees are on individual arrangements that are potentially influenced by cuts in penalty rates and 45,800 non-managerial Sunday hospitality employees are on individual arrangements that are potentially influenced by cuts in penalty rates.
60. This brings the total number of non-managerial employees who are not covered by awards or actually receiving penalty rates, but who are on collective or individual agreements for which minimum benchmarks are relevant and potentially influenced by the penalty rates decision, to 75,100 in retail and 76,000 in hospitality.

61. The next section sums and summarises these numbers and presents them, more appropriately, as ranges.

**Table 12: Estimating direct and indirect effects of Sunday penalty rates, Australia**

	<b>Retail</b>	<b>Hospitality</b>
Sunday workers		
Direct coverage - award non-managerial employees	91.9	120.3
Direct coverage - award employees (paid)	85%	68%
	78.1	81.8
Direct coverage - award employees (unpaid)	15%	32%
	13.8	38.5
Indirect coverage - penalty rates – collective agreements	46.4	43.8
Indirect coverage - penalty rates – individual contracts	34.5	26.6
Indirect coverage - penalty rates (total CAs & ICs)	80.8	70.4
Total direct paid & indirect coverage penalty rates	56.7%	52.2%
	158.9	152.2
Covered by collective agreements	100.1	100.7
Indirect coverage – BOOT	53.8	56.8
Individual arrangements – Sunday	74.5	61.1
Individual arrangements - Sunday - influenced by prates	55.8	45.8
Indirect coverage - in Ics	21.4	19.2
Indirect coverage - total benchmarks (eg BOOT)	75.1	76.0
Total coverage	<b>247.9</b>	<b>266.8</b>
Not covered	18.6	15.3
Total non-managerial employees	266.5	282.0
Managerial employees	13.9	9.6
Total employees	280.3	291.7

**I. Total numbers of employees directly and indirectly affected by penalty rate reductions**

62. In total, then, we estimate that, nationally:

- 90,000 to 95,000 non-managerial Sunday employees in retail are *directly affected* by reductions in penalty rates. This represents about 34 per cent of non-managerial employees in retail trade;

- 155,000 to 160,000 non-managerial Sunday employees in retail are *indirectly affected* by the reductions in penalty rates. This represents about 58 per cent of non-managerial employees in retail trade;
- 30,000 to 35,000 Sunday employees in retail are *not affected* by the reductions in penalty rates, comprising 15,000 to 20,000 non-managerial employees and 10,000 to 15,000 managerial employees. This accounts for about 7 per cent of non-managerial employees and, in total, about 12 per cent of all employees in retail trade.

Similarly:

- 120,000 to 125,000 non-managerial Sunday employees in hospitality are *directly affected* by reductions in penalty rates. This represents about 41 per cent of non-managerial employees in hospitality;
  - 145,000 to 150,000 non-managerial Sunday employees in hospitality are *indirectly affected* by the reductions in penalty rates. This represents about 50 per cent of non-managerial employees in hospitality;
  - 30,000 to 35,000 Sunday employees in hospitality are *not affected* by the reductions in penalty rates, comprising 15,000 to 20,000 non-managerial employees and 5,000 to 10,000 managerial employees. This accounts for about 5 per cent of non-managerial employees and, in total, about 9 per cent of all employees in hospitality.
63. For Victoria, we would assume that direct effects would be proportionately lower, due to the lower award coverage in Victoria and higher coverage by enterprise agreements. Accordingly, indirect coverage would be proportionately higher. Taking account of Victoria's share of national employment in these industries, and lower award coverage, we would expect that, across the two industries, 45,000 to 50,000 non-managerial employees in retail and hospitality would be *directly affected* by reductions in penalty rates, and another 80,000 to 90,000 would be *indirectly affected* by the reductions in penalty rates.

**J. Impact on pay rates**

64. Table 13 shows the reductions in penalty rates applying under various awards as a result of the February 2017 decision. In most awards where reductions have occurred, the reductions in Sunday rates are equivalent to a cut of 13 to 17 per cent in hourly pay, but in the Retail Award the reduction for permanent workers is equivalent to 25 per cent of hourly pay. The Retail Award (with a 25 per cent cut for permanent workers, and a 14 per cent cut for casuals) and the Hospitality Award (with a 14 per cent cut for permanent workers) are very likely the two largest awards under consideration here given the dominant roles, mentioned earlier, in the retail and hospitality industries.
65. Cuts in public holiday penalty rates are also shown in Table 13. They are consistently equivalent to a 9 to 10 per cent reduction on previous Sunday hourly pay rates.

**Table 13: Award rate percentage changes, retail and hospitality, 2017**

Day/ Award	Engagement	From	To	Change
<b>Sundays</b>				
Retail Award	Full-time and part-time employees:	200	150	-25%
Retail Award	Casual employees:	175	150	-14%
Hospitality Award	Full-time and part-time employees:	175	150	-14%
Fast Food Award	Full-time and part-time employees: (Level 1 employees only)	150	125	-17%
Fast Food Award	Casual employees: (Level 1 employees only)	175	150	-14%
Pharmacy Award	Full-time and part-time employees: (7.00 am – 9.00 pm only)	200	150	-25%
	Casual employees: (7.00 am – 9.00 pm only)	200	175	-13%
<b>Public holidays</b>				
Hospitality Award	Full-time and part-time employees:	250	225	-10%
	Casuals	275	250	-9%
Restaurant Award	Full-time and part-time employees:	250	225	-10%
Retail Award	Full-time and part-time employees:	250	225	-10%
	Casuals	275	250	-9%
Fast Food Award	Full-time and part-time employees:	250	225	-10%
	Casuals	275	250	-9%
Pharmacy Award	Full-time and part-time employees:	250	225	-10%
	Casuals	275	250	-9%

66. Table 14 shows the dollar value of the reductions in penalty rates, first on Sundays, then on public holidays. For each of the awards mentioned above, the value of the

previous rates (ie the rates applying before the decision, which remain in effect until the end of June 2017) is shown, along with the dollar value of reductions, for the highest and lowest non-introductory adult classifications in the awards. Many reductions are worth around \$5 per hour, though the lowest reduction for adult permanent employees on the large Retail Award is closer to \$10 per hour at the lower end of the classification scale, growing to \$12 per hour for higher level retail employees, and the reductions for permanent workers on the Pharmacy Award range from \$10 to \$16 per hour.

**Table 14: Reductions in hourly wages on Sundays and public holidays**

Award	Type of employee	Classification		Previous award rate		Value of hourly change	
		Minimum <sup>a</sup>	Maximum	Minimum	Maximum	Minimum	Maximum
<b>Sundays</b>							
Retail Award	Full-time and part-time employees:	level 1	level 8	\$38.88	\$47.58	\$9.72	\$11.90
Retail Award	Casual employees:	level 1	level 8	\$38.88	\$47.58	\$5.55	\$6.80
Hospitality Award	Full-time and part-time employees:	level 1 <sup>a</sup>	level 6	\$31.87	\$39.36	\$4.55	\$5.62
Fast Food Award	Full-time and part-time employees: (Level 1 employees only)	level 1	level 1	\$29.16	\$29.16	\$4.86	\$4.86
Fast Food Award	Casual employees: (Level 1 employees only)	level 1	level 1	\$34.02	\$34.02	\$4.86	\$4.86
Pharmacy Award	Full-time and part-time employees: (7.00 am – 9.00 pm only)	Pharmacy assistant - level 1	Pharmacist manager	\$38.88	\$63.54	\$9.72	\$15.89
Pharmacy Award	Casual employees: (7.00 am – 9.00 pm only)	Pharmacy assistant - level 1	Pharmacist manager	\$43.74	\$71.48	\$5.47	\$8.94



		Classification		Previous award rate		Value of hourly change	
Award	Type of employee	Minimum <sup>a</sup>	Maximum	Minimum	Maximum	Minimum	Maximum
<b>Public holidays</b>							
Hospitality Award	Full-time and part-time employees:	level 1 <sup>a</sup>	level 6	\$45.53	\$56.23	\$4.55	\$5.62
Hospitality Award	Casuals	level 1 <sup>a</sup>	level 6	\$50.08	\$61.96	\$4.55	\$5.63
Restaurant Award	Full-time and part-time employees:	level 1 <sup>a</sup>	level 6	\$45.53	\$56.23	\$4.55	\$5.62
Retail Award	Full-time and part-time employees:	level 1	level 8	\$48.60	\$59.48	\$4.86	\$5.95
Retail Award	Casuals	level 1	level 8	\$53.46	\$65.42	\$4.86	\$5.95
Fast Food Award	Full-time and part-time employees:	level 1	level 3	\$48.60	\$52.95	\$4.86	\$5.30
Fast Food Award	Casuals	level 1	level 3	\$53.46	\$56.68	\$4.86	\$5.15
Pharmacy Award	Full-time and part-time employees:	Pharmacy assistant - level 1	Pharmacist manager	\$48.60	\$79.43	\$4.86	\$7.94
Pharmacy Award	Casuals	Pharmacy assistant - level 1	Pharmacist manager	\$53.46	\$87.37	\$4.86	\$7.94

a Excludes 'Introductory level'

### K. Losses in daily wages

67. The loss of earnings for a whole day's work on Sunday or a public holiday are illustrated in Table 15. Two sets of calculations, based on data in Table 14, are shown: the loss for people working four hours on Sunday or a public holiday; and the loss for people working eight hours on Sunday or a public holiday. Again, for public holidays the losses are fairly consistent: for someone working a four-hour day it is either a little below or a little above \$20 (that is, in the range \$18 to \$24), and for someone working an eight-hour day it is mostly in the range \$36 to \$48. In the

pharmacy award, some higher paid classifications can lose as much as \$64 for an eight our day.

68. On Sundays, there is more variation. An employee regularly working Sundays in many awards would lose between \$18 and \$27 for a four-hour day, but in the upper tiers of the Pharmacy award losses for four hours of work could be \$64 and in the large Retail Award, losses for four hours of work range from \$39 to \$48.

69. For an employee regularly working eight hours on a Sunday, losses in most awards fall in the range \$36 to \$54 per week, but among higher classifications in the Pharmacy Award the losses could be \$127 per week and in the large Retail Award losses for eight hours work on a Sunday range from \$78 per week to \$95 per week.

**Table 15: Reductions in daily wages on Sundays and public holidays**

Award	Type of employee	Classification		Loss for 4 hours work		Loss for 8 hours work	
		Minimum <sup>a</sup>	Maximum	Minimum	Maximum	Minimum	Maximum
<b>Sundays</b>							
Retail Award	Full-time and part-time employees:	level 1	level 8	\$38.88	\$47.58	\$77.76	\$95.16
Retail Award	Casual employees:	level 1	level 8	\$22.22	\$27.19	\$44.43	\$54.38
Hospitality Award	Full-time and part-time employees:	level 1 <sup>a</sup>	level 6	\$18.21	\$22.49	\$36.42	\$44.98
Fast Food Award	Full-time and part-time employees: (Level 1 employees only)	level 1	level 1	\$19.44	\$19.44	\$38.88	\$38.88
Fast Food Award	Casual employees: (Level 1 employees only)	level 1	level 1	\$19.44	\$19.44	\$38.88	\$38.88
Pharmacy Award	Full-time and part-time employees: (7.00 am – 9.00 pm only)	Pharmacy assistant - level 1	Pharmacist manager	\$38.88	\$63.54	\$77.76	\$127.08

Award	Type of employee	Classification		Loss for 4 hours work		Loss for 8 hours work	
		Minimum <sup>a</sup>	Maximum	Minimum	Maximum	Minimum	Maximum
Pharmacy Award	Casual employees: (7.00 am – 9.00 pm only)	Pharmacy assistant - level 1	Pharmacist manager	\$21.87	\$35.74	\$43.74	\$71.48
<b>Public holidays</b>							
Hospitality Award	Full-time and part-time employees:	level 1 <sup>a</sup>	level 6	\$18.21	\$22.49	\$36.42	\$44.98
Hospitality Award	Casuals	level 1 <sup>a</sup>	level 6	\$18.21	\$22.53	\$36.42	\$45.06
Restaurant Award	Full-time and part-time employees:	level 1 <sup>a</sup>	level 6	\$18.21	\$22.49	\$36.42	\$44.98
Retail Award	Full-time and part-time employees:	level 1	level 8	\$19.44	\$23.79	\$38.88	\$47.58
Retail Award	Casuals	level 1	level 8	\$19.44	\$23.79	\$38.88	\$47.58
Fast Food Award	Full-time and part-time employees:	level 1	level 3	\$19.44	\$21.18	\$38.88	\$42.36
Fast Food Award	Casuals	level 1	level 3	\$19.44	\$20.61	\$38.88	\$41.22
Pharmacy Award	Full-time and part-time employees:	Pharmacy assistant - level 1	Pharmacist manager	\$19.44	\$31.77	\$38.88	\$63.54
Pharmacy Award	Casuals	Pharmacy assistant - level 1	Pharmacist manager	\$19.44	\$31.77	\$38.88	\$63.54

a Excludes 'Introductory level'

70. How many hours per week does a typical Sunday employee work? These data are not published. The closest we can come to it in published data is the 1992 ABS Time Use Survey.<sup>26</sup> It shows that, in that year, male weekend workers in any industry worked an average of 355 minutes (5 hours 55 minutes) in their main job, and female weekend workers worked an average of 314 minutes (5 hours 14 minutes) in

<sup>26</sup> ABS Cat No 4153.0, Table 7, p25.

their main job. (Where it was their second job, males worked an average 5 hours 41 minutes on Sunday and females 6 hours 24 minutes.) By comparison, on weekdays male employees in their main job worked an average of 8 hours 12 minutes and females worked an average of 6 hours 41 minutes. If we give weights to those 1992 main job figures equivalent to 43 per cent for males and 57 per cent for females (an approximation of the likely gender composition of Sunday workers in the retail and hospitality industries, based on the data in Table 10), then that gives an average of 331 minutes (almost exactly five and a half hours) for a weekend worker. In the absence of other data, this seems a good assumption to make about the hours worked on Sundays by Sunday workers; and there is not much reason to believe that, for those businesses open on a public holiday, hours worked by employees working on public holidays would be much less.

71. For 5.5 hours work, then, the losses for an affected Sunday employee in the hospitality industry would range between \$25 and \$31 per day. The losses for an affected Sunday employee in the retail trade industry working 5.5 hours would range between \$31 and \$65 per day (but would be higher for higher classification employees under the Pharmacy Award).
72. On public holidays, the losses for an affected employee in either industry working 5.5 hours would range between \$25 and \$33 per day (but again would be higher for higher classification employees under the Pharmacy Award).

#### **L. Impact on weekly pay after accounting for employment effects**

73. The main justification for the reductions in penalty rates was the increase in employment that would result. There are serious doubts about whether any employment effects would materialise, and there is evidence that there would be no significant employment gains.<sup>27</sup> The data in Table 15, in effect, assume no employment gains as a result of the decision.

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<sup>27</sup> S Yu & D Peetz, 'Are Sunday penalty rates a job killer? A real-world experiment refutes employers' claim', *The Conversation*, 18 August 2016, <https://theconversation.com/are-sunday-penalty-rates-a-job-killer-a-real-world-experiment-refutes-employers-claim-59962>

74. However, we should also consider the consequences if there are positive employment effects. For example, if existing employees end up working more hours as a result of the decision, they may end up better off, depending on how many hours they work and how large is the reduction in hourly earnings. In this context, it is important to recognise that the term 'employment' often refers to the number of 'hours worked'. This is not the same as the number of 'jobs'. Econometric research suggests that an increase in the number of hours worked in the industry is a more plausible consequence of reduced penalty rates than an increase in the total number of jobs.<sup>28</sup>
75. What size increase in hours worked, then, is plausible? Most studies of the relationship between regulated wages and employment have focused on the effects of varying minimum wages, and few have explicitly examined penalty rates. The relationship between wages and employment is referred to as the elasticity of employment with respect to wages. Elasticity shows in numerical form the responsiveness of one variable (such as employment) to another variable (such as wages). That is, it calculates the percentage change in one variable in response to a percentage change in another variable. The elasticity of demand is calculated as the percentage change in employment divided by the percentage change in wages.
76. There is little reason to think that employment would be more sensitive to variations in penalty rates than in minimum wages. There is, however, good reason to think that it would be less sensitive: if changes in penalty rates do not flow through to lower prices (and hence to increased demand for the products of the retail and hospitality industries), then they might simply lead to a redistribution of hours worked—from weekdays to weekends, for example, with no change in aggregate hours. It would be expected that at least some of the adjustment by employers would take the form of this redistribution, even if prices do change. Notably, no employer evidence to the FWC proceedings on penalty rates suggested that there

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<sup>28</sup> Yu, S. "Evaluating the Impact of Sunday Penalty Rates in the Nsw Retail Industry." In *Report prepared for the Shop, Distributive and Allied Employees Association (SDA)*. Sydney: University of Sydney Business School, 2015.

would be a reduction in prices flowing from them.<sup>29</sup> So there is little reason to expect an overall increase in demand for goods and services sold by retail and hospitality employers. If this holds, it suggests again that employment effects would be muted and the elasticity of employment with respect to changes in penalty rates is likely to be closer to zero than the elasticity of employment with respect to changes in minimum wages. (A less likely scenario is that consumers spend more on retail and hospitality industry products due to increased availability regardless of no change in prices, but if this occurs then it would be at the expense of expenditure on products of other industries, in which case any gains in employment in retail and hospitality would likely be offset by losses in employment in other industries. As the analysis in this report does not extend beyond the retail and hospitality sectors, we do not consider this scenario further here.)

77. Estimates of elasticity of employment with respect to minimum wages vary, with many negative, some zero and some positive.<sup>30</sup> They tend to bunch in a range from -0.1 to -0.3. A 2014 meta-analysis of 942 studies (that is, a quantitative study of 942 earlier analyses) led to an estimate of -0.25, and a range of -0.07 to -0.44.<sup>31</sup> A plausible range for elasticities, if there are employment effects from minimum wage changes, is between 0 and -0.5. Table 16 considers the total impact on labour earnings from the penalty rate reductions for low-classification employees receiving Sunday penalty rates using a variety of elasticity scenarios. Four scenarios are considered, assuming elasticities of hours worked by workers on penalty rates with respect to the value of penalty rates of: -0.5, -0.3, -0.1 and 0. It shows, for example, that for an average level 1 employees under the hospitality award, working 5.5 hours on a Sunday prior to the decision (a plausible average), total Sunday earnings would fall by between 8 per cent and 14 per cent, a result of the combined effect of a 14 per cent drop in hourly pay (as shown in Table 13, and the last column of Table 16) and an increase in hours worked of up to 0.29 hours or 7 per cent (there are four

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<sup>29</sup> [2017] FWCFB 2001 at [632]

<sup>30</sup> Most prominently, Card, D., and A. Krueger. *Myth and Measurement: The New Economics of the Minimum Wage*. Princeton: Princeton University Press, 1995.

<sup>31</sup> Lichter, A., S. Sieglöcher, and A. Peichl. "The Own-Wage Elasticity of Labor Demand: A Meta-Regression Analysis." In *Discussion Paper No. 14-016*. Mannheim: Zentrum für Europäische Wirtschaftsforschung GmbH (Center for European Economic Research) (ZEW) 2014.

possible hours scenarios corresponding to the four elasticity scenarios). This corresponds to earnings losses of from \$14 to \$25 per week for an employee originally doing 5.5 hours work.

78. For an average level 1 employee under the retail award, total Sunday earnings would fall by between 16 per cent and 25 per cent, a result of the combined effect of a 25 per cent drop in hourly pay and an increase in hours worked of up to 0.5 hours or 12.5 per cent. This corresponds to earnings losses of from \$33 to \$53 per week, for an employee working for 5.5 hours on a Sunday before the penalty rate changes take effect.
79. Of course, these are just averages. A typical employee need not actually work 6.19 hours or 5.91 hours on a Sunday instead of 5.5 hours, as most employers would round the number of hours worked by employees, so some might work 5 hours and others 6 or 7 hours (or some other combination) under the various elasticity scenarios.
80. Table 17 shows similar data for low-classification workers on public holidays. For them, the earnings losses range from 5 per cent to 10 per cent, depending on the elasticity assumed. This is equivalent to losses ranging from \$14 to \$27 per holiday, for an employee working for 5.5 hours on a public holiday before the penalty rate changes take effect.
81. Table 18 contains similar data for high-classification employees working under awards for 5.5 hours on Sundays. The percentage changes in Sunday earnings are the same as shown in Table 16 for low-classification employees (as Sunday penalty rates are expressed as a percentage), but the dollar values are higher. For high-classification employees under many awards shown in Table 18, the dollar value of the loss ranges from \$15 to \$37. However, for high-classification permanent employees under the Pharmacy Award the losses begin around \$55 on the most optimistic of the elasticity scenarios. For high-classification permanent employees under the common Retail Award the losses begin at \$30 on the most optimistic of the elasticity scenarios and range up to \$48 per week where elasticity is zero.

82. Table 19 has the estimates for high-classification employees working 5.5 hours on public holidays. Again, the percentage changes are the same as in Table 17, but the dollar values are higher, ranging from \$15 to \$44 depending on the elasticity assumption.
  
83. Under each of these scenarios, the reduction in penalty rates leads to a drop in labour income, even after allowing for potential employment effects. For the lowest level permanent part-time employees in the retail award, working an average of 5.5 hours on a Sunday, then under the generous assumption of an elasticity of -0.5, they end up working an average extra 0.69 hours (41 minutes) for \$33.41 less in total pay for working Sunday. (For higher level employees, they would work that extra 41 minutes for, coincidentally, \$41 less in Sunday pay.) A permanent part-time employee on the Hospitality Award would, on the same assumptions regarding prior hours worked and elasticity, work an extra 0.4 hours (24 minutes) for \$14 less per day if they were a low classification employee (and \$18 per day less if they were a high classification employee). The penalty rate cut thus represents, in each scenario, a transfer of income from employees to employers. Most employees are unambiguously worse off, as they work the same or longer hours for less total pay.



**Table 16: Changes in Sunday pay, after allowing for various potential employment effects, low classification workers**

			Day's pay for 5.5 hours work (\$)	New hours worked				Total new pay (\$)				Change (\$)				Change %			
				e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0
Retail Award	Full-time and part-time employees:	level 1	213.84	6.19	5.91	5.64	5.5	180.43	172.41	164.40	160.38	-33.41	-41.43	-49.45	-53.46	-16%	-19%	-23%	-25%
Retail Award	Casual employees:	level 1	213.84	5.90	5.73	5.58	5.5	196.38	191.15	185.91	183.29	-17.46	-22.69	-27.93	-30.55	-8%	-11%	-13%	-14%
Hospitality Award	Full-time and part-time employees:	level 1	175.28	5.90	5.73	5.58	5.5	160.97	156.68	152.39	150.25	-14.31	-18.60	-22.89	-25.04	-8%	-11%	-13%	-14%
Fast Food Award	Full-time and part-time employees: (Level 1 employees only)	level 1	160.38	5.95	5.78	5.60	5.5	144.79	140.33	135.88	133.65	-15.59	-20.05	-24.50	-26.73	-10%	-13%	-15%	-17%
Fast Food Award	Casual employees: (Level 1 employees only)	level 1	187.11	5.90	5.73	5.58	5.5	171.83	167.26	162.68	160.38	-15.28	-19.86	-24.43	-26.73	-8%	-11%	-13%	-14%
Pharmacy Award	Full-time and part-time employees: (7.00 am – 9.00 pm only)	Pharmacy assistant – level 1	213.84	6.19	5.91	5.64	5.5	180.43	172.41	164.40	160.38	-33.41	-41.43	-49.45	-53.46	-16%	-19%	-23%	-25%
	Casual employees: (7.00 am – 9.00 pm only)	Pharmacy assistant – level 1	240.57	5.84	5.71	5.57	5.5	223.66	218.39	213.13	210.50	-16.91	-22.18	-27.45	-30.07	-7%	-9%	-11%	-13%

**Table 17: Changes in public holiday pay, after allowing for various potential employment effects, low classification workers**

			Day's pay for 5.5 hours work	New hours worked				Total new pay				Change (\$)				Change %			
				e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0
Hospitality Award	Full-time and part-time employees:	level 1	250.42	5.78	5.67	5.56	5.50	236.64	232.14	227.63	225.38	-13.78	-18.27	-22.78	-25.04	-6%	-7%	-9%	-10%
	Casuals	level 1	275.44	5.75	5.65	5.56	5.50	261.79	257.24	252.67	250.40	-13.65	-18.21	-22.77	-25.04	-5%	-7%	-8%	-9%
Restaurant Award	Full-time and part-time employees:	level 1	250.42	5.78	5.67	5.56	5.50	236.64	232.14	227.63	225.38	-13.78	-18.27	-22.78	-25.04	-6%	-7%	-9%	-10%
Retail Award	Full-time and part-time employees:	level 1	267.30	5.78	5.67	5.56	5.50	252.60	247.79	242.98	240.57	-14.70	-19.51	-24.32	-26.73	-6%	-7%	-9%	-10%
	Casuals	level 1	294.03	5.75	5.65	5.56	5.50	279.46	274.59	269.73	267.30	-14.58	-19.44	-24.30	-26.73	-5%	-7%	-8%	-9%
Fast Food Award	Full-time and part-time employees:	level 1	267.30	5.78	5.67	5.56	5.50	252.60	247.79	242.98	240.57	-14.70	-19.51	-24.32	-26.73	-6%	-7%	-9%	-10%
	Casuals	level 1	294.03	5.75	5.65	5.56	5.50	279.46	274.59	269.73	267.30	-14.58	-19.44	-24.30	-26.73	-5%	-7%	-8%	-9%
Pharmacy Award	Full-time and part-time employees:	Pharmacy assistant - level 1	267.30	5.78	5.67	5.56	5.50	252.60	247.79	242.98	240.57	-14.70	-19.51	-24.32	-26.73	-6%	-7%	-9%	-10%
	Casuals	Pharmacy assistant - level 1	294.03	5.75	5.65	5.56	5.50	279.46	274.59	269.73	267.30	-14.58	-19.44	-24.30	-26.73	-5%	-7%	-8%	-9%

**Table 18: Changes in Sunday pay, after allowing for various potential employment effects, high classification workers**

			Day's pay for 5.5 hours work (\$)	New hours worked				Total new pay (\$)				Change (\$)				Change %			
				e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0
Retail Award	Full-time and part-time employees:	level 8	261.69	6.19	5.91	5.64	5.50	220.80	210.99	201.18	196.27	-40.89	-50.70	-60.51	-65.42	-16%	-19%	-23%	-25%
Retail Award	Casual employees:	level 8	261.69	5.90	5.73	5.58	5.50	240.32	233.92	227.51	224.30	-21.37	-27.78	-34.18	-37.39	-8%	-11%	-13%	-14%
Hospitality Award	Full-time and part-time employees:	level 6	216.48	5.90	5.73	5.58	5.50	198.81	193.50	188.21	185.56	-17.67	-22.98	-28.27	-30.92	-8%	-11%	-13%	-14%
Fast Food Award	Full-time and part-time employees: (Level 1 employees only)	level 1	160.38	5.95	5.78	5.60	5.50	144.79	140.33	135.88	133.65	-15.59	-20.05	-24.50	-26.73	-10%	-13%	-15%	-17%
Fast Food Award	Casual employees: (Level 1 employees only)	level 1	187.11	5.90	5.73	5.58	5.50	171.83	167.26	162.68	160.38	-15.28	-19.86	-24.43	-26.73	-8%	-11%	-13%	-14%
Pharmacy Award	Full-time and part-time employees: (7.00 am – 9.00 pm only)	Pharmacist manager	349.47	6.19	5.91	5.64	5.50	294.87	281.77	268.66	262.10	-54.60	-67.71	-80.81	-87.37	-16%	-19%	-23%	-25%
Pharmacy Award	Casual employees: (7.00 am – 9.00 pm only)	Pharmacist manager	393.14	5.84	5.71	5.57	5.50	365.50	356.90	348.30	344.00	-27.64	-36.25	-44.84	-49.14	-7%	-9%	-11%	-13%

**Table 19: Changes in public holiday pay, after allowing for various potential employment effects, high classification workers**

			Day's pay for 5.5 hours work (\$)	New hours worked				Total new pay (\$)				Change (\$)				Change %			
				e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0
Hospitality Award	Full-time and part-time employees:	level 6	309.27	5.78	5.67	5.56	5.50	292.26	286.69	281.12	278.34	-17.01	-22.58	-28.15	-30.92	-6%	-7%	-9%	-10%
	Casuals	level 6	340.78	5.75	5.65	5.56	5.50	323.88	318.24	312.62	309.80	-16.90	-22.54	-28.16	-30.98	-5%	-7%	-8%	-9%
Restaurant Award	Full-time and part-time employees:	level 6	309.27	5.78	5.67	5.56	5.50	292.26	286.69	281.12	278.34	-17.01	-22.58	-28.15	-30.92	-6%	-7%	-9%	-10%
Retail Award	Full-time and part-time employees:	level 8	327.14	5.78	5.67	5.56	5.50	309.14	303.26	297.37	294.43	-18.00	-23.88	-29.77	-32.71	-5%	-7%	-9%	-10%
	Casuals	level 8	359.81	5.75	5.65	5.56	5.50	341.96	336.02	330.07	327.10	-17.85	-23.79	-29.74	-32.71	-5%	-7%	-8%	-9%
Fast Food Award	Full-time and part-time employees:	level 3	291.23	5.78	5.67	5.56	5.50	275.21	269.97	264.73	262.10	-16.02	-21.26	-26.50	-29.12	-6%	-7%	-9%	-10%
	Casuals	level 3	311.74	5.75	5.65	5.56	5.50	296.29	291.13	285.97	283.40	-15.46	-20.61	-25.77	-28.34	-5%	-7%	-8%	-9%
Pharmacy Award	Full-time and part-time employees:	Pharmacist manager	436.87	5.78	5.67	5.56	5.50	412.84	404.98	397.11	393.18	-24.02	-31.89	-39.75	-43.68	-5%	-7%	-9%	-10%
	Casuals	Pharmacist manager	480.54	5.75	5.65	5.56	5.50	456.71	448.76	440.83	436.85	-23.83	-31.78	-39.71	-43.68	-5%	-7%	-8%	-9%

84. The above estimates also assume no labour supply effects. Indeed, they imply that all of the adjustment could take place through hours with no change in who has jobs. However, a labour supply effect is likely. With lower wages, some workers will cease to offer themselves for Sunday work, preferring to use their Sundays for something else and maybe looking for employment on a different day or with a different employer or industry, or withdrawing from the labour force. (The limits on this are discussed in a later section.) To the extent that such people leave their employer, their place may be taken by another worker, either someone who was previously unemployed or someone who was previously working for that (or another) employer in the industry but not offered those hours. The net transfer of income from labour to employers is not materially changed by this supply-side behaviour, though a greater number of employees (some becoming former employees) would suffer a reduction in income, while some new employees would be added to the payroll.

**M. Impact on annual earnings**

85. Estimates of the annual losses arising from the Sunday penalty rate changes are made by multiplying weekly losses by 52.14, the average number of weeks in a year. They are shown in Table 20. For low-classification employees working 5.5 hours per Sunday, annual earnings losses due to changes in penalty rates range from around \$750 to \$1600 in hospitality and from \$900 to \$2800 in the retail industry, depending on the award and the assumed elasticity. For high classification employees working 5.5 hours per Sunday, lost earnings due to penalty rates changes range from \$900 to \$1600 in hospitality, from \$1100 to \$3400 in retail trade, and from \$1400 to \$4600 in pharmacies. Any Sunday workers also working public holidays would experience further annual reductions not shown here, due to changes in public holiday penalty rates.

**Table 20: Annual losses from changes to penalty rates, employees previously working 5.5 hours on Sunday**

Award/ Form of employment		Low classification employees						High classification employees					
		Classification	Previous annual income Sunday work (52 Sundays)	Changes in annual income (\$)				Classification	Previous annual income Sunday work (52 Sundays)	Changes in annual income (\$)			
				e = -0.5	e = -0.3	e = -0.1	e = 0			e = -0.5	e = -0.3	e = -0.1	e = 0
Retail Award	Full-time and part-time employees:	level 1	11,150	-1,742	-2,160	-2,578	-2,787	level 8	13,645	-2,132	-2,643	-3,155	-3,411
Retail Award	Casual employees:	level 1	11,150	-910	-1,183	-1,456	-1,593	level 8	13,645	-1,114	-1,448	-1,782	-1,949
Hospitality Award	Full-time and part-time employees:	level 1	9,139	-746	-970	-1,194	-1,306	level 6	11,287	-921	-1,198	-1,474	-1,612
Fast Food Award	Full-time and part-time employees: (Level 1 employees only)	level 1	8,362	-813	-1,045	-1,278	-1,394						
Fast Food Award	Casual employees: (Level 1 employees only)	level 1	9,756	-797	-1,035	-1,274	-1,394						
Pharmacy Award	Full-time and part-time employees: (7.00 am – 9.00 pm only)	Pharmacy assistant – level 1	11,150	-1,742	-2,160	-2,578	-2,787	Pharmacist manager	18,221	-2,847	-3,530	-4,213	-4,555
	Casual employees: (7.00 am – 9.00 pm only)	Pharmacy assistant – level 1	12,543	-882	-1,156	-1,431	-1,568	Pharmacist manager	20,498	-1,441	-1,890	-2,338	-2,562

**N. Total impact on labour incomes and aggregated losses**

86. We can attempt to estimate the aggregated losses from the penalty rate changes, based on the estimated numbers of employees affected by penalty rates in each industry, and the losses experienced by those employees. We cannot simply multiply the annual losses in Table 20 by the numbers of affected employees in each award, as we cannot be sure of how many employees are affected by each award, either by being award-reliant or having those awards as the underpinning awards for the BOOT or for the determining legality of individual arrangements.
87. Instead, we estimate the average loss in each of the two industries and then multiply it by the numbers of directly and indirectly affected workers. In the retail industry, we take the retail award as being indicative of the losses experienced by all workers there. We thus estimate the average annual loss for each employee by a weighted average of casual and permanent employees in the industry, taken from Table 9, and multiplied by the estimated numbers of directly and indirectly affected employees taken from Table 12. The table shows three possible measures of hours worked on a Sunday—4, 5.5 and 7 hours—but as per Table 20, 5.5 hours is the preferred estimate. The Table also shows four possibility elasticity estimates. The resultant estimate is likely to be conservative because some employees are covered by the Pharmacy Award which has greater losses than those for the Retail Award.
88. For hospitality, we have used the lowest identified annual loss (fast food award level 1 employees) as the starting point, and then multiplied it as described above. We have chosen the lowest rate because, while for some employees the losses are grater, some other employees experience no reductions in penalty rates.
89. The resultant estimates are that, if employees work an average of 5.5 hours on Sundays, the total direct earnings losses across the two industries are between \$220 million and \$370 million, depending on the elasticity assumption used. A minority (about 22 per cent) of these losses are ‘unpaid’, but the majority are ‘paid’ losses.
90. The total potential losses over the medium term across the two industries, if Sunday employees work an average of 5.5 hours on Sundays, could range from \$520m to \$1

billion, again depending on elasticity estimates used (Table 21), though the extent to which potential losses translate into actual losses is unknown. Direct losses, as mentioned, include an allowance for 'unpaid' losses due to award non-compliance; we have not attempted to make a similar estimate for 'non-award' employees as no useful data are available and there is also, in the case of collective agreements, an assumption that, at least for union agreements, the union party will have ensured that a proposed agreement satisfies the BOOT and will ensure that the terms of the agreement are adhered to. The potential indirect losses do, however, include the reductions in the value of minimum standards used in constructing the BOOT or legal minimums for individual arrangements. Whether these reductions in legal minimums are translated into reductions in actual amounts paid will depend on the bargaining power of employers and employees or unions in each workplace. As mentioned, the average bargaining power of employees has become quite low.

91. As average hourly earnings in both industries are very similar for awards and collective agreements, it seems likely that in many cases reductions in award minimums will actually affect the value of payments to employees under collective agreements in these industries, and we would expect many individual contracts to also be affected. The figures shown for 'potential' total effects, including direct and indirect effects, could well, to a large degree, translate into actual losses for the employees concerned.

**Table 21: Aggregated losses from Sunday penalty rate changes, Australia**

Industry	Hours per Sunday	Direct losses (paid + unpaid) (\$m)				Total potential losses (direct + indirect) (\$m)			
		e = -0.5	e = -0.3	e = -0.1	e = 0	e = -0.5	e = -0.3	e = -0.1	e = 0
Retail	4	-94.5	-118.5	-142.7	-154.7	-205.2	-319.6	-384.6	-417.2
	5.5	-129.9	-163.0	-196.1	-212.8	-282.2	-439.5	-528.9	-573.7
	7	-165.3	-207.4	-249.6	-270.8	-359.1	-559.4	-673.1	-730.1
Hospitality	4	-65.3	-84.9	-104.4	-114.2	-176.1	-228.8	-281.6	-308.0
	5.5	-89.8	-116.7	-143.6	-157.1	-242.1	-314.6	-387.2	-423.5
	7	-114.3	-148.5	-182.8	-199.9	-308.1	-400.5	-492.8	-539.0
Total	4	-159.8	-203.4	-247.1	-268.9	-381.3	-548.5	-666.2	-725.2
	5.5	-219.7	-279.7	-339.7	-369.8	-524.3	-754.2	-916.1	-997.1
	7	-279.6	-356.0	-432.4	-470.7	-667.3	-959.8	-1,165.9	-1,269.1



**O. Impact on earnings equity**

92. There are two ways to examine the impact of penalty rates changes in retail and hospitality on earnings equity: by considering individual earnings and by considering household earnings.
93. In relation to individual earnings, the relative position of retail and hospitality employees is likely well known. The median earnings of full-time adult non-managerial employees in these two industries are the two lowest of all Australian industries. While Australian median earnings of employees was \$1376 per week in May 2016, the median in retail was the lowest at \$1014 per week and in hospitality the next lowest at \$1017 per week. No other industry had median earnings below \$1100 per week.<sup>32</sup>
94. Amongst all employees (ie including part-timers and managers) the gap was even greater. Median earnings across all industries were \$1056 per week, but in accommodation and food services it was just \$439 per week and in retail trade \$695 per week. Only the notoriously intermittent arts and recreation services, at \$632 per week, was in the same range; outside that, no industry had median earnings below \$900 per week.<sup>33</sup>
95. The gap in hourly wages was also high. Average wages amongst non-managerial employees were \$37.00 per hour across all industries, but were the lowest, at \$23.90 per hour, in accommodation and food services and at the second lowest, \$26.20 per hour, in retail trade. No other industry had average wages below \$30 per hour.<sup>34</sup>

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<sup>32</sup> ABS 63060DO008\_201605 Employee Earnings and Hours, Australia, May 2016, Table 10 FULL-TIME NON-MANAGERIAL EMPLOYEES PAID AT THE ADULT RATE, Deciles and quartiles of weekly total cash earnings–Industry

<sup>33</sup> ABS, 63060DO003\_201605 Employee Earnings and Hours, Australia, May 2016, Table 12 ALL EMPLOYEES, Deciles and quartiles of weekly total cash earnings–Industry

<sup>34</sup> ABS, 63060DO005\_201605 Employee Earnings and Hours, Australia, May 2016, Table 4 NON-MANAGERIAL EMPLOYEES, Number of employees, Average weekly total cash earnings, Average weekly total hours paid for, Average hourly total cash earnings–Method of setting pay, Industry

96. At an individual level, then, employees in the retail and hospitality industry were the lowest paid in the country. Reducing earnings of this group would necessarily increase the inequality of the distribution of individual earnings, whether measured on an hourly or weekly basis and whether referring to full-time workers or to all workers.
97. The other way of looking at distribution is to consider the household, rather than the individual, as the unit of analysis. This is not necessarily superior—it assumes, for example, that all households pool resources and costs—but it is an approach some people prefer. The argument is sometimes made that retail and hospitality employees come from high-earnings households and therefore reducing their incomes would not worsen, but could indeed reduce, inequality of household incomes. Published data on ‘retail households’ (those households where at least one adult retail industry employee lives) are more readily available than for hospitality households, so we use those data here, bearing in mind that we saw above that the individual earnings of employees from hospitality were as low as, or lower than, individual earnings of retail employees.
98. Analysis of the Household Income and Labour Dynamics in Australia (HILDA) survey by Ian Watson showed that retail households had a wage and salary income approximately 16 per cent lower than other employee households in 2013. Accordingly, gross income was about 14 per cent lower in retail households. Retail households’ expenditure on ‘non-discretionary’ expenditure was 98 per cent that of other employee households, but retail households’ expenditure of ‘discretionary’ items was only 81 per cent of what was spent by employee households from other industries. Retail households were less likely to describe themselves as ‘very’ or ‘reasonably comfortable’ than other-industry households (by 59 per cent to 70 per cent) and more likely to say that they would not be able to readily raise money (\$3000) in an emergency (28 per cent compared to 16 per cent). They were also more likely to say that they had been unable to pay their utility bills on time (18 per cent compared to 12 per cent) or to have asked for financial help from friends or

family (16 per cent compared to 11 per cent).<sup>35</sup> These results are consistent with the findings from examination of individual earnings but inconsistent with the idea that retail employees come from households with high earnings or living standards. Households containing any adult retail employees are worse off than other households by a range of measures, including wage and salary income, gross income, expenditure on non-discretionary items, ability to access financial resources in an emergency and ability to pay bills on time. There is no reason to believe that the situation would be reversed for hospitality employees.

99. In sum, the data indicate that FWC reductions in penalty rates would have the effect of widening the inequality of individual earnings and also widening the inequality of household earnings.

**P. Impact on the gender pay gap**

100. As the retail and hospitality industries are the two lowest paid industries, and workers affected by the cuts in penalty rates are more likely to be female than workers in the rest of the labour force, then average women's pay will be reduced by a greater amount than average men's pay. It arithmetically follows that a reduction of penalty rates in those industries will widen the overall gender pay gap (the ratio of female to male hourly earnings). In this context, the fact that the existing gender pay gap amongst award-reliant workers is near zero does not alter this conclusion, as a similar percentage and dollar reduction in pay applied to more women than men is what widens the gender pay gap. The effect in widening the gap is not likely to be large—in the order of magnitude of 0.1 percentage points for hourly wage rates across the economy as a whole—but it is nonetheless clear that the gender pay gap would increase as a result of this, if other things remain constant.

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<sup>35</sup> Ian Watson, *Employee Earnings in the National Retail Industry*, Report for the Shop Distributive and Allied Employee's Association, Macquarie University and SPRC UNSW, Sydney, pp54-58.

**Q. Impact on individual employment choices<sup>36</sup>**

101. In assessing the impact of penalty rate changes, it is also necessary to take account of individual preferences and choices. This is because part of the rationale for changing penalty rates (aside from employment effects) is the idea that penalty rates for Sunday work are no longer relevant, because there is no disutility associated with working on Sundays, as Sunday workers prefer to be working that day.
102. On the question of whether Sundays were worse for workers than Saturdays, the authors of the AWALI study, from the Centre for Work + Life (CWL), concluded: 'Those who work on Saturday and particularly Sunday have worse work life interference — an issue that is relevant to the current debate about penalty rates in Australia'.<sup>37</sup> Other Australian studies also showed that Sunday remained a day for family and civic activities, more so than Saturday or any weekday.<sup>38</sup>
103. Underemployment (people wanting to work more hours than they presently work) is common amongst part-time workers. It has shown structural increases over time across the economy as part-time employment has grown. The high rate of underemployment raises serious questions as to how useful a measure the unemployment rate is these days of labour market 'slack'. Underemployment is most pervasive in the retail and hospitality industries.<sup>39</sup> Over the triennium 2014-16, the average underemployment rate (underemployed persons as a proportion of all employed persons in an industry) was 16.2 per cent in retail trade and 20.3 per cent in hospitality (the industry with the highest rate of underemployment), compared to

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<sup>36</sup> This section draws on research into Sunday workers in the retail and hospitality industries undertaken by Scott Bruynius for an Honours thesis at Griffith University, under supervision of Associate Professor Georgina Murray and this author. It largely repeats analysis presented in D Peetz, S Bruynius & G Murray, "'Choice" and weekend penalty rates in retail and hospitality', *Machinery of Government*, 28 February 2017, <https://medium.com/the-machinery-of-government/choice-and-weekend-penalty-rates-in-retail-and-hospitality-f16a8a8836bf#.yafflqt5n>

<sup>37</sup> Skinner, N. & Pocock, B. 2014. *The Persistent Challenge: Living, Working and Caring in Australia in 2014*. In *The Australian Work and Life Index 2014*. Adelaide: Centre for Work + Life, University of South Australia. emphasis added.

<sup>38</sup> Craig, L. & Brown, J.E. 2014. 'Weekend work and leisure time with family and friends: Who misses out?'. *Journal of Marriage and Family*, vol. 76, no. 4, pp. 710-727.; Bittman, M. 2005. 'Sunday working and family time'. *Labour and Industry*, vol. 16, no. 1, pp. 59-81.

<sup>39</sup> ABS Cat No 4102.0, June 2010.

a national average of 8.8 per cent.<sup>40</sup> (Average rates in 2011-13 were and 14.1, 17.8 and 7.7 per cent, respectively.)

104. To investigate the issue of choice further, a student under the supervision of myself and another academic undertook qualitative interviews, using a snowballed sample of 15 Sunday workers from the retail and hospitality industries.<sup>41</sup> This involved workers across Brisbane and the Sunshine Coast, mostly Anglophone, from a range of backgrounds including young adults, students and those with and without dependents. The interviewees included: two full-time workers and 13 casuals; was evenly split by gender (seven males and eight females); included eight students; included two workers with dependants; with an even split also between retail (seven) and hospitality (eight); and covered workers ranging in age from 20 to 38 years old. The incomes of the casuals were mostly in the range of \$400-650 per week.

105. The qualitative interviews shed light on some other aspects of Sunday work. The first was the financial aspects. Many respondents were convinced the incomes they were receiving were inadequate. One said:

*I work Sundays for the pay, it massively helps me manage all my living expenses...but it is a bit of downer sometimes knowing you're stranded inside doing shit jobs whilst all your friends are at a barbeque or random gathering.<sup>42</sup>*

106. This was particularly the case for full-time students, dispelling any idea that these were 'non-career' employees whose needs were unimportant. (The FWC decision cut Sunday penalty rates in the fast food industry by substantially more for what it saw as 'non-career' than for 'career' workers.) One student said:

*I have to say I'm most encouraged because of the money...I'm at a point where I rely on them to support my existence at the moment and I can only work very little*

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<sup>40</sup> ABS 6291.0.55.003 Labour Force, Australia, Detailed, Quarterly; Table 19. Underemployed persons by Industry division (ANZSIC) or Occupation major group (ANZSCO) of main job and Sex

<sup>41</sup> See footnote 36.

<sup>42</sup> TS, 20, casual hospitality worker

*because of study...and they rarely give me other days of work that I want. I have looked around but without luck...it's difficult to find the time to between work and uni as they are. So yeah...the money is my motivator!*<sup>43</sup>

Amongst our interviewees, four workers were seeking full-time employment. Of these, three were already holding down multiple jobs.

107. The second aspect revealed by the interviews was control. Eight employees reported they had 'little control' of their employment schedule. Four had 'some control' (mostly these were students). Three were under the impression they exercised control over their schedule. One of those with low control said:

*I was afraid my hours would get docked if I didn't agree to work Sundays...or that I would slip to the back of the boss's list of who gets called up first for the hours.*<sup>44</sup>

108. Those with low autonomy reported that penalty rates were an essential element in accepting Sunday work. They acted to mitigate the negative effects of their predominantly involuntary Sunday employment.
109. Even where respondents did report some control, it was qualified. Three students that reportedly exercised control over their schedule and who perceived Sunday work as "kinda like any other day"<sup>45</sup> also had their availability largely curtailed through their studies. They were virtually incapable of working other times that would combine to create the same income they derived from Sunday work and were admittedly relying upon penalties to meet living expenses. They would not work as many Sunday as they did in different circumstances.
110. Not all was bad. Some had positive perceptions that principally derived from their social cohesion at work—that is, they worked with close friends or partners. This may have added to those individuals' sense of control.

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<sup>43</sup> LJ, 31, casual retail worker and student

<sup>44</sup> SD, casual hospitality worker and student

<sup>45</sup> AC, casual hospitality worker

111. The third aspect of Sunday work uncovered by these interviews was the difficulty of working on Sundays. Respondents' aversion to Sunday work stemmed from the disruption to shared time they would otherwise have had with family, partners and friends. Said one:

*It's already lame enough working a Sunday as it is you know...you miss out on all the casual gatherings with friends and the fam.<sup>46</sup>*

112. Another was "really quite emotional sometimes" after missing time with her children because she felt compelled to "drag" herself "into work on occasional Sundays" in order to maintain living expenses or due to employer demands.<sup>47</sup>

113. A desire for more Saturday work and for less Sunday work was quite common amongst our interviewees. Many were unable to secure their preferred schedule, which would have involved working fewer Sundays. Said one:

*I've been on this dodgy contract now for over six months and they knew I wanted to go on full-time when I started and made it seem like that would be possible...so I stuck around. It pisses me off because I know they can put more of us on full-time but like having us starved of hours so we'll work whenever.<sup>48</sup>*

Sunday work, however, was seen as the way to "boost the coffers".

114. Amongst the weekend workers whom we interviewed, all were generally averse to working on Sundays one way or another. This was because of the loss of social, familial, rest or leisure time.

115. This has implications for the labour supply effects mentioned earlier. On the one hand, lower Sunday penalty rates make Sundays undoubtedly less attractive for many of the interviewees. But their choices are constrained by several things affecting their availability. So many were in no position to exercise unfettered choice over working on Sundays. Some were only available Sundays. A majority voiced

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<sup>46</sup> JL, part-time student and casual retail.

<sup>47</sup> JS, casual

<sup>48</sup> JM, ongoing-casual retail worker.

concern about refusing Sunday work due to either job insecurity, the prospect of employer retribution or underemployment. As a result, many would be forced to work Sundays regardless of the change to payment structures. This constrains the labour supply effects mentioned earlier.

116. Like the ABS data, these interviews showed that underemployment was common. This meant that casuals were particularly reliant on Sunday premiums to maintain their standard of living. Losses of penalty rates would lead to losses of income for many low-income, non-students—as well as for students—with little capacity to respond.
117. In sum, the losses discussed in earlier sections should be considered in the context of the disutility of working Sundays and public holidays. Those who work on Sunday have worse work life interference than other workers. Underemployment is most pervasive in the retail and hospitality workers. Qualitative research indicated that: many workers in retail and hospitality are under financial pressure; many have little ‘control’ over their employment schedule, with penalty rates an essential element in accepting Sunday work; some employees gained from the social interactions at work on Sundays; but many found Sunday work difficult because of disruption to shared time with others, and were generally averse to it because of the loss of social, familial, rest or leisure time. That said, some voiced concern about refusing Sunday work due to either job insecurity, the prospect of employer retribution or underemployment. They had low power in the employment relationship.

**R. Loaded rates as an alternative to penalty rates**

118. In its February 2017 decision the FWC discussed ‘the potential for loaded rates in retail modern awards’, commenting that ‘subject to appropriate safeguards, schedules of ‘loaded rates’ may make awards simpler and easier to understand’, that they ‘would also allow small businesses to access additional flexibility without the need to enter into an enterprise agreement’. Loaded rates ‘may have a positive effect on award compliance’, considered the FWC, observing that ‘there would be benefit in further engagement with interested parties as to the dominant roster patterns in the relevant industries so that appropriate rates can be developed’. A



loaded rate is 'a rate which is higher than the applicable minimum hourly rate specified in the modern award and is paid for all hours worked instead of certain penalty rates (such as the penalty rates for Saturday and Sunday work)'.<sup>49</sup>

119. This section does not discuss the full implications of 'loaded rates',<sup>50</sup> only their implications for assessing the earnings losses facing employees from penalty rate changes. A corollary of loaded rates is that Sunday and public holiday penalty rates would be lower than present (they would cease to exist) and that hourly minimum rates for weekday, daytime work would be higher. The main implications are that:
- (a) loaded rates would greatly increase the variability of the losses, because some employees would face greater losses and other employees would face lesser losses than are implied or shown here;
  - (b) by arithmetical necessity, any 'average' or 'dominant' roster would provide for fewer Sunday or public holiday hours than are worked by people who disproportionately engage in Sunday or public holiday work;
  - (c) the biggest losses would be experienced by those with the highest penalty rates, as the hourly wages for those people would come down by the greatest amount. Hence the greatest losses would be experienced by people working public holidays (particularly holidays such as Christmas), and then by people working Sundays;
  - (d) accordingly, the losses actually experienced by workers shown here, arising from the February 2017 decision, would be considerably less than the actual losses

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<sup>49</sup> [2017] FWC 1001 at [88] to [93].

<sup>50</sup> such as: consistency with the Modern Awards objective of 'the need to encourage collective bargaining' in s134(1)(b) of the Fair Work Act; or the logistics or ethics of abandoning penalty rates because of employer non-compliance, especially when a larger part of non-compliance relates to wage rates generally, not just penalty rates.

experienced by such workers if the FWC were to move to a 'loaded rates' award model in the sector;

- (e) the exact size of the losses from the extension of loaded rates into awards cannot be determined *ex ante* unless we know the level at which 'loaded rates' would be pitched, but even a rate that was 'cost neutral' in aggregate would have very variable impacts on employers and businesses, with few experiencing no change in either their costs or incomes. There are a wide variety of rostering arrangements in the retail and hospitality sectors, and it is highly unlikely that any genuinely dominant pattern, in terms of its impact on employees, can be found.<sup>51</sup> Even if it were found, some people would be worse off, and experience greater losses than suggested above, and some better off.

## S. Conclusions

120. Overall, there are significant income losses arising from cuts to penalty rates in the retail and hospitality industries. For workers under hospitality awards, reductions in Sunday penalty rates equate to reductions of 14 per cent to 17 per cent in Sunday pay amongst affected workers. This is equivalent to \$25 to \$31 per hour for affected employees doing 5.5 hours work on a Sunday and proportionately higher or lower than that for those working eight or four hours on a Sunday. For retail award workers, the cuts range from 14 per cent to 25 per cent for affected workers, equivalent to \$31 to 65 per hour for affected employees doing 5.5 hours work on a Sunday and proportionately higher or lower than that for those working eight or four hours on a Sunday (but would be higher for higher classification employees under the Pharmacy Award).

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<sup>51</sup> For example, in a study of mineworkers in the mining and energy industries we identified over 60 rostering patterns affecting employees, and no single pattern was dominant.

121. Reductions in public holiday penalty rates are mostly equivalent to cuts in holiday pay in the range 9 to 10 per cent. The losses for an affected employee in either industry working 5.5 hours would range between \$25 and \$33 per day (but again would be higher for higher classification employees under the Pharmacy Award).
122. These estimates assume no gains in employment. It is controversial as to whether or not any gains in employment would result from the decision, and a strong case can be made that any employment gains would be small and restricted to the number of hours worked rather than the number of jobs (that is, where employers chose to increase employment on Sundays, they would mainly do it by working existing employees for longer hours, rather than hiring new employees). If we assume some employment gains, then under plausible estimates of the elasticity of employment with respect to penalty rates in these industries, the losses in pay are reduced because employees are working longer hours.
123. However, in the average case Sunday employees end up working longer hours for less total pay, and so are unambiguously worse off. The penalty rate cuts thus represent a transfer of income from labour to capital. The effects depend upon hours normally worked, the size of the penalty rate cut, the classification and the assumed elasticity, but for the lowest level permanent part-time employees in the retail award, working an average of 5.5 hours on a Sunday, then under the generous assumption of an elasticity of 0.5, they end up working an average extra 0.69 hours (41 minutes) for \$33.41 less in total pay for working Sunday. (For higher level employees, they would work that extra 41 minutes for \$41 less in Sunday pay.) A permanent part-time employee on the Hospitality Award would, on the same assumptions regarding prior hours worked and elasticity, work an extra 0.4 hours (24 minutes) for \$14 less per day if a low classification employee (and \$18 per day less if a high classification employee).
124. In practice, some employees would not be offered any additional hours (and face a larger reduction in Sunday pay), while some others would have a greater increase in hours (and so face a smaller reduction, or possibly an increase, in Sunday pay), so the numbers above are just averages. Moreover, some employees would likely cease

working Sundays, and seek work elsewhere if they can find it, so their places may be taken by other people who might otherwise be unemployed or work in other industries (though we would not expect a reduction in unemployment to follow, as employees leaving retail and hospitality to find work elsewhere would, if they take jobs elsewhere, ultimately reduce job opportunities for unemployed people).

125. These estimates do not take account of any reductions in hours worked at other days of the week, due to any redistribution of hours worked from weekdays to Sundays. As no lay employer evidence indicated any reduction in prices, it is unlikely that overall demand for retail or hospitality services would increase by much, if at all, so it is plausible that any increase in Sunday hours would be partly or fully offset by reductions in hours on other days of the week.
126. For low-classification employees working 5.5 hours per Sunday and holding a job all year, annual earnings losses due to changes in penalty rates would range from around \$750 to \$1600 in hospitality and from \$900 to \$2800 in the retail industry, depending on the award and the assumed elasticity. For high classification employees working 5.5 hours per Sunday, lost earnings due to penalty rates changes range from \$900 to \$1600 in hospitality, from \$1100 to \$3400 in retail trade, and from \$1400 to \$4600 in pharmacies. Employees consistently working 8 hours on Sundays would experience larger losses over a year: for example, of up to \$5000 in retail trade. Any Sunday workers also working public holidays would experience further annual reductions not shown here, due to changes in public holiday penalty rates.
127. The losses discussed above should be considered in the context of the disutility of working Sundays and public holidays. Those who work on Sunday have worse work life interference than other workers. Underemployment is most pervasive in the retail and hospitality workers. Qualitative research indicates that: many workers in retail and hospitality are under financial pressure; many have little 'control' over their employment schedule, with penalty rates an essential element in accepting Sunday work; many found Sunday work difficult because of disruption to shared time with others, and were generally averse to it because of the loss of social,

familial, rest or leisure time. That said, some voiced concern about refusing Sunday work due to either job insecurity, the prospect of employer retribution or underemployment. They had low power in the employment relationship.

128. Some employees do not received penalty rates because of agreements they are under that satisfy legal requirements, but some employees are not paid them because of non-compliance by employers with their legal obligations. We thus distinguish between 'paid' and 'unpaid' penalty rate entitlements. It appears that in the order of magnitude of 15 per cent of penalty rates reductions for retail workers were therefore unpaid, as were nearly a third in accommodation and food services. For most employers breaching awards, the problem was not that penalty rates were too 'complex'; it was simply that they did not want to pay the relevant wages.
129. It is difficult to be certain of the numbers of employees affected by cuts in penalty rates. We distinguish between those who are directly affected by the decision (that is, they work on Sundays and their pay is set by awards in the retail and hospitality sectors), and those who are indirectly affected (they are not covered by those awards, but they are either in receipt of penalty rates in the same sector, or the minimum standards of their enterprise agreements or individual contracts are influenced by the awards (for example, by the BOOT) and this may have a potential impact on their actual rates of pay as new agreements are negotiated). As average wages under awards and enterprise agreements in the two sectors are very similar, it appears that enterprise agreements in particular will be influenced by the award rates, as will a substantial proportion of individual contracts for non-managerial employees. That said, we estimate that 90,000 to 95,000 non-managerial Sunday employees in retail are *directly affected* by reductions in penalty rates (with 10,000 to 15,000 of these 'unpaid' reductions). This represents about 34 per cent of non-managerial employees in retail trade. In addition, 155,000 to 160,000 non-managerial Sunday employees in retail appear *indirectly affected* by the reductions in penalty rates. This represents about 58 per cent of non-managerial employees in retail trade. Their pay rates are likely to be influenced over the medium term by the changes in penalty rates under awards, as agreements are renegotiated. Meanwhile, in hospitality 120,000 to 125,000 non-managerial Sunday employees are *directly*

*affected* by reductions in penalty rates (including 35,000 to 40,000 ‘unpaid’). This represents about 41 per cent of non-managerial employees in hospitality. In addition, 145,000 to 150,000 non-managerial Sunday employees in hospitality are *indirectly affected* by the reductions in penalty rates. This represents about half of non-managerial employees in hospitality. When aggregated, the potential losses over the medium term across the two industries, both direct and indirect, if employees work an average of 5.5 hours on Sundays, could range from \$520m to \$1 billion, depending on elasticity assumptions used, though the extent to which potential losses translate into actual losses is unknown.

130. Employment in the sector shows gendered patterns, with males making up approximately 55 per cent of permanent full-time employees in both sectors, but females dominated permanent part-time and casual employment in both, comprising 61 to 66 per cent of casual employees and 69 to 76 per cent of permanent part-time employees. Overall, females make up 57 per cent of Saturday workers in retail trade, and 60 per cent of Sunday workers, are female. In accommodation and food services, 53 per cent of Saturday workers, and 54 per cent of Sunday workers, are female. In total, 57 per cent of Sunday workers in retail and hospitality are female. The proportion of Sunday award workers who were female would probably be slightly higher. As the retail and hospitality industries are the two lowest paid industries, and workers affected by the cuts in penalty rates are more likely to be female than workers in the rest of the labour force, then average women’s pay will be reduced by a greater amount than average men’s pay. The reduction of penalty rates in those industries will widen the overall gender pay gap, by an amount in the order of magnitude of 0.1 percentage points.
131. Reductions in penalty rates will likely affect a bigger proportion of the workforce in regional than in metropolitan areas, due to their greater share of employment, particularly in some regions, and likely greater award reliance.
132. There are two ways to consider the impact of penalty rates changes in retail and hospitality on earnings equity: by considering individual earnings and by considering household earnings. On individual earnings, the retail and hospitality industries are,

by most measures, the two lowest-paying industries in Australia. Reducing earnings of this group would necessarily increase the inequality of the distribution of individual earnings, whether measured on an hourly or weekly basis and whether referring to full-time workers or to all workers.

133. The other way of looking at distribution is to consider the household, rather than the individual, as the unit of analysis. This is not necessarily superior, but the argument is sometimes made that retail and hospitality employees come from high-earnings households or that they are mostly students who are just supplementing an already adequate income. Data on income distribution amongst wage-earner households show several indicators that households containing any adult retail employees are *worse off* than other employee households by a range of measures, including wage and salary income, gross income, expenditure on non-discretionary items, ability to access financial resources in an emergency and ability to pay bills on time.
134. In addition, it is apparent that many employees in retail and hospitality are not students. It is true that a majority of tertiary students who are employed work in either the retailing or hospitality industries. However, this does not mean that most people who work in those industries are tertiary students, let alone that they are not in need. The majority of retail employees who would be affected by changes to weekend penalty rates are *not* students, even though a significant minority are students. Amongst those working on Saturdays and Sundays in retail trade, students are disproportionately found amongst casuals, but there is still a substantial minority of Saturday casuals who are not students and who are in turn dependent on the money. Changes in penalty rates in retail therefore affect not only tertiary students but also a significant number of people who are likely to be dependent on hospitality employment as their sole source of income.
135. In sum, reductions in penalty rates have the effects of widening the both inequality of individual earnings and also the inequality of household earnings.
136. Finally, any future move to 'loaded rates' would increase the variability of the losses discussed above, such that the greatest losses (above those previously discussed)

would be experienced by people working public holidays (particularly holidays such as Christmas), and then by people working Sundays. That is, the impacts in reducing pay for Sunday workers, increasing the gender pay gap, and widening inequality of individual and household earnings would likely be greater than the numbers stated above. However, we do not quantify these, nor discuss the potential effects of other future decisions on penalty rates outside the retail and hospitality sector. While a reduction in penalty rates in the retail and hospitality sectors would likely increase pressures to eventually flow on reductions to other sectors, those potential effects are not estimated or considered here.