



PO Box 576  
Crows Nest NSW 1585  
Executive Director Peter Strong  
(02) 9431 8646  
Email: [ceo@cosboa.org.au](mailto:ceo@cosboa.org.au)  
[www.cosboa.org.au](http://www.cosboa.org.au)

17 July 2017

## **Inquiry into Sunday Penalty Rates**

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

***The current Sunday penalty rate debate ignores the fact that one union negotiated lower than award rates for most Sunday workers years ago. They did so to subsidise the wages of their weekday workers.***

Thank you for the opportunity to provide input to this important inquiry.

### **A two-tiered workplace relations system**

Since the introduction of the Fair Work Act, it has been noticeable that the Australian industrial system has now a two-tiered approach to employment arrangements in the retail & hospitality sectors.

This situation has allowed a union to manipulate the system to their benefit and to the detriment of others including: non-union employees, those seeking weekend work and small businesses.

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

These negotiations have disadvantaged weekend, part time or casual employees. As mentioned above it seems the union is manipulating the system to benefit its members (most of whom work weekdays) at the expense of Sunday workers who are in the main non-members.

This has also created conflict in the business world and competition problems for small businesses operating in retail and the restaurant and catering sectors as well as in other sectors where Sunday work may occur.

The outcome for small businesses is that they are forced to pay much higher rates on a Sunday than larger businesses. This often means that employing people on a Sunday is uneconomical forcing the business owner to either close the business or run the business themselves. The Restaurant & Catering Association has research that shows that 60,000 jobs would be created if small businesses were allowed to pay the same Sunday rates as big businesses.

The fact is the SDA union has negotiated up to 100 Enterprise Agreements with large and medium businesses across the country that not only pay lower than award rates to Sunday workers but in some cases no penalty rates at all to other weekend workers.

### **Ethical and legal dilemmas**

Small business people are now confronted with ethical dilemmas. We are often approached by potential employees who state that they would work for the same rate as paid by businesses such as Woolworths or McDonalds. A common response when a small business person says it is not viable to pay double time on a Sunday and open the shop is 'but I will get time and a half at Woolworths why can't I get it with you?'

We have told business people they must follow the award and not to break the rules. But they of course ask the question 'why can Woolworths do this and not me?'

We also have desperate people who need an income or who can only work on Sundays offer to work for cash. This should not be happening and the offer must be rejected but this situation has been created by a union that cares nought for workers.

### **Who is at fault, the union or the businesses?**

There is some belief that if these EAs are found to be lacking legally and ethically that the companies involved should be held up as the main culprits as they signed the agreement and put agreements to the vote among their employees. This we believe is a false argument.

The undeniable fact is that there was one organisation involved in every EA that took pay away from Sunday workers and that organisation is the SDA.

It is also absurd that a company can be blamed for accepting the recommendations of one of the largest unions in Australia. The reality is that often if a company rejects the offer of a union it is attacked and criticised in the media and elsewhere for not looking after their workers. In this case the companies involved have agreed with recommendations of the union and may still be criticised for not looking after their workers.

The only way that a company could take the blame for this is if the union involved was palpably incompetent, the SDA is not normally recognised as incompetent.

### **What are the facts?**

The questions that need to be asked by this inquiry, and answered, are:

In the relevant EAs that authorised lower than award rates were weekend workers informed that if they voted for the agreement that they would receive a cut in their penalty rates and in their pay? If so how were they informed? A copy of the actual communications with the workers, particularly Sunday workers, needs to be presented. Our understanding is that the workers were not informed of pay cuts. If this

is a fact why did the SDA not inform workers that there would be a pay cut? Was this deliberate or incompetence?

What information was provided to the Fair Work Commission to show that the 'Better Off Overall Test' (BOOT) was satisfied for all the EAs? Were statutory declarations presented that were not reflective of the facts. If so why were they wrong?

Did any workers complain after the agreements were in place? If so how were the complaints managed? Our understanding is that aggrieved workers had to take their own concerns to the Fair Work Commission and were not supported by their union.

When these questions are answered the Inquiry can then make recommendations on any investigations that should take place and how to ensure transparency in EA negotiations. The answers to these questions should inform future action. Certainly, a question must be asked whether the negotiation of EAs provides an opportunity for larger businesses to gain an upper hand in the market place.

Paying above award wages to attract the best and most skilled workers is very different from manipulating the workplace relation system to force competitors from the market place.

### **Politics ignoring the facts & unions attacking businesses**

This EA process and the way the information has been hidden has also created an opportunity for politics to override facts. The debate presented by the unions give a strong impression to the public that penalty rates are being decreased for vulnerable Sunday workers when in actual fact the penalty rates were decreased for the majority of Sunday workers by unions six years ago.

This situation has also created a bullying environment for small business people. Representatives from unions are ensuring that the facts around penalty rates are not provided to the public by aggressively targeting business people who say that they would employ people if the Sunday rates were the same as the SDA negotiated rates. These unions do not care if a business person loses their business and their health, or that their employees lose their jobs.

The fact that a Senate inquiry is being held into this issue provides the opportunity for Senators to show they support facts and the law by:

ensuring the facts around penalty rates are made known to the general population; and

condemning union bullying and recommending police and Fair Work Commission investigations into these actions.

### **Changing the Fair Work Act to ensure that enterprise agreements do not contain terms that specify penalty rates which are lower than the respective modern award.**

To add to the hypocrisy of those denying Sunday penalty rate changes we see that there is a push to guarantee penalty rates. We are not opposed to penalty rates, we are however concerned that any demonstrative change will inhibit the ability of workers to negotiate with their employers on matters that are important to them. There must be care taken that any

changes to the legislation does not remove the capacity for employers to be able to respond to the needs of their employees and their business needs. Any changes should also not add further complexity to the system.

Any need for changing the Fair Work Act may provide an opportunity to remove complexity and make the system easier to be understood by workers and employers who are not experts. For example we could have a small business industrial award that is easy to understand and easy to regulate. That would be a win-win for employees and employers. Perhaps it would not be seen as a win by some in the union movement who prefer to bamboozle workers so they can maintain their jobs?

In the end the Fair Work System must be transparent, facts should not be misrepresented and we should aim for simplicity in workplace regulations. Then employers and employees can be confident of the pay and conditions they must provide and will receive; and the regulators job will be easier.

Ends