To The Senate Inquiry into Penalty Rates

We are strongly opposed to Senator Xenophon's proposal to abolish the payment of penalty rates to workers in the hospitality and retail industry which will reduce those workers wages by over $100 per week.

Under Senator Xenophon's proposals businesses with fewer than 20 staff will not have to pay penalty rates unless an employee has worked more than 38 hours in a seven day period or worked more than 10 hours in a day.

We believe that there are important principles involved in this issue.

Penalty rates have a long history. Our society has long regarded weekend days particularly Sunday as a family day, a day that the family can enjoy together. This strengthens the bond between parents and children.

However society has required some employees to work weekends and abnormal hours to meet the needs of society and industry. Where this has been necessary those workers have been paid penalty rates or overtime rates or shift work rates as a form of compensation for their loss of family and recreation time.

The penalty rates provisions has acted as a deterrent to discourage employers from requiring their employees to work at weekends where it has not been absolutely necessary.

Senator Xenophon's proposal violates this principle and could open up the flood gate that ultimately leads to the abolition of penalty rates.

The second principle is that it is wrong to penalize large numbers of working people for the purpose of providing a limited benefit to a relatively small number of businesses.

This is doubly so when that benefit is also bestowed on all small businesses including those who can currently operate their business at a profit on Sundays. As a result their employees suffer a reduction in wages of more than $100 per week and those businesses receive a bonus of $100 per week.

Another principle violated is the principle of workers being paid equal pay for work of equal value. Under the Senator's proposal some workers will be paid penalty rates i.e. $100 more than some others working beside them not receiving penalty rates.

The Senators proposal disregards the fact that in 2007 Federal Election the Australian people rejected Work Choices and one of the main reasons was that Work Choices abolished the legal protection of penalty and overtimes rates and gave employers the option of not paying penalty rates.

Unjust and Irrational

Should the Senator's proposal be made law a whole range of unjust and illogical situations will arise. These include:

Small employers will be able to restructure the working days of their employees so that they work their normal 38 hour week up to seven days not five without being required to pay penalty rates. Where this happens those employees will spend more time traveling to and from work and incurring additional travel costs.

Employers can have some employees working their normal 38 hours during week days and when they work on a Sunday get paid penalty hours while other employees working along side them under Senator Xenophon's proposals, will not receive penalty rates.

Once small employers are exempt from paying penalty rates to some employees there will be relentless pressure from employers organisations to expand the definition of a small business so that the exemption is extended to more employers and at a later stage to even more.

There are numerous ways businesses can restructure the operation of their business so that they fit within Senator Xenophon's definition of a small business.

We only refer to some examples:

A restaurant owner with a number of restaurants could, instead of being owned by one owner, each restaurant could be owned by a different member of the family and as a result each of those restaurants would qualify for the exemption.

Other businesses which have more than 20 employees during the year but less than 20 during the off season period, would demand that they be covered by the exemption.

Other businesses will reduce their permanent staff and increase their casual staff so they qualify for the exemption.

Once a precedent is created it will be difficult, if not impossible, to exempt small businesses in other industries who will seek to argue, rightly or wrongly, that there are some small businesses in their industry that do not open on Sunday, allegedly on the grounds that they cannot do so because of penalty rates.

This will then again open the flood gate to expand the definition referred to earlier.

A poor argument

Recently a Sydney Newspaper in an article referred to a restaurant owner who argued that penalty rates should be abolished because he had to close his restaurant on 21 Sundays in the year because it was unprofitable. He sought to support this argument by saying

penalty rates had denied his employees the right to work and earn wages on those Sundays.

What the employer did not say was that he makes a profit on the other 31 Sundays he does open and when this is added to the other days of the year that he is making a profit, it totals 344 days a year. He wants the whole system of penalty rates abolished so he can make a profit on 365 days per year.

In respect of his employees, under his proposal, they would cease to be entitled to penalty rates on the 31 Sundays they work as well as the 21 Sundays additional days that the restaurant would be open.

According to our calculations, his employees would finish up working on 52 Sundays a year not 31 for a handful of additional dollars.

In the same article the industry spokesperson claimed that cruise liner tourists had to go back to their ships for breakfast on Sunday because there weren't enough restaurants open for them to have breakfast ashore. Apart from whether this is correct, on how many Sundays are Cruise liners docked in Sydney. What the spokesman ignores is the fact that there are restaurants open every Sunday of the year and tourists are not denied the opportunity of having breakfast ashore.

From a workers point of view the industry spokesperson is more concerned about some tourist not having to shop around to have breakfast ashore than about the consequences of reducing wages of workers affected by the abolition of penalty rates.

Big picture

Our submission sets out to show that Senator Xenophon's proposal will create a precedent and a series of unmanageable contradictions that could result in the abolition of Sunday/Week End penalty rates for millions of Australian workers over time.

If this happens, Saturdays and Sundays will become ordinary working days.

Students who work on Sundays will only be entitled to ordinary pay and while the proposals may marginally increase their employment opportunities their earnings for working Sundays will be reduced up to $100 or so per week. So for these reasons we reject the view that the proposal will assist students.

Another flow on effect will be that women, who currently work part time and at week ends to supplement their family income, will incur a significant reduction in pay. This can increase their dependence on social welfare.

The inevitable flow on of the abolition of weekend penalty rates will adversely affect family life. More and more parents will be separated from their children and partner at the weekends.

This will put greater stress on families who are already under great stress in trying to balance work and family life.

It is the duty of Parliament to do all they can to protect the family which is the foundation on which our society is built.

Research

In preparation for this submission we visited Erina Fair, the biggest shopping centre on the Central Coast (NSW). We obtained a lot of information from a centre directory produced by Lend Lease.

There are 330 shops in the centre of which 20 are major stores and the rest small shops. We found that all shops were open on Sunday, September 30 except for 10 shops. Banks and other financial service providers were not open as has always been the case. There were 20 cafes and restaurants; 11 fresh food shops and 27 fast food shops at the centre and all were open.

We then visited the East Gosford shopping centre where there is no major retailer and found that all the 5 restaurants opened on Sunday evening and that the 9 shops where coffee and food was obtainable, 5 were open and 4 were closed. We noted that the coffee shops did not have many customers.

The IGA shop assistant interviewed advised us that Sunday is the worst trading day and Saturday the second worst trading day of the week.

Our conclusions are that Sunday is a poor trading day and has nothing to do with payment of penalty rates but a lot to do with the fact that there are not enough customers on Sunday to justify all the 9 shops opening.

It is also argued that poor trading on Sundays supports the view that parents prefer to spend their Sundays together with family and friends and additionally spend their time with their children in sporting, community and other forms of recreation.

On behalf of NSW Central Coast Residents
Desmond Moore, Doris Hart, Beverley Symons.