Submission to the Education, Employment and Workplace Relations Legislation Committee

Inquiry into the -

Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012

October 2012

This submission has been prepared by United Voice National Office on behalf of United Voice members across Australia.

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1. ABOUT UNITED VOICE

United Voice is one of Australia's largest unions. United Voice represents 120,000 workers across a diverse range of industries including hospitality, health and aged care, early childhood education and care, manufacturing, education and property services. Many members of United Voice work in award reliant and penalty rate dependant jobs in the hospitality sector. United Voice is recognised as the principal union in the hospitality sector.

United Voice makes the following submission on behalf of all members.

2. EXECUTIVE SUMMARY

Penalty rates are an integral part of our industrial relations system and have been so for close to 100 years. A survey undertaken on behalf of United Voice, shows overwhelming public support for continuing the current penalty rate system as compensation for working weekends and evenings.

Penalty rates are a continuing societal norm in Australia. Weekends and time with family, friends and community is valuable and those who miss that due to work should be compensated.

The attempt on the part of employer groups to de-legitimise the notion that workers should be compensated in the form of penalty rates for work undertaken at night and on weekends will not stop at the restaurant and hospitality industries. United Voice views this Bill as the beginning of a concerted campaign by employers to remove penalty rates across the economy.

Some employers in the restaurant industry assert that the cost of wages, specifically penalty rates, are prohibitive to doing business. They have been unable to produce any evidence to support this assertion, we would suggest that this is because the evidence produced by United Voice, as set out in section 10 of this submission, disproves that assertion.

3. RECOMMENDATION

United Voice calls upon the Education, Employment and Workplace Relations Legislation Committee to:

1. Recommend that the Australian Parliament oppose the Fair Work Amendment (Small Business—Penalty Rates Exemption) Bill 2012.
2. Express its unequivocal support for the retention of penalty rates in the restaurant and catering industry Awards.
3. Express its support for penalty rates, across all industries, as fundamental rights of Australian workers which should never be removed by an Australian parliament or industrial court or commission.

4. REQUEST TO APPEAR WITH WITNESSES

United Voice requests the opportunity to appear at any hearings the Committee may schedule in order to give evidence to the effect of this submission. United Voice members in affected industries will speak to the importance of penalty rates in their lives.

> "Without penalty rates I would be unable to pay my mortgage and rates. I would have to try and pick up more days than the 5 days I already work. I have worked in the industry for most of my life, penalty rates have been the only thing helping me out financially."
>
> - Gillian, restaurant worker

5. INTRODUCTION

The *Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012* would provide an exemption from the requirement to pay penalty rates to businesses in the retail, restaurant and catering industries where such businesses employ 20 or fewer full time equivalent staff. Businesses would be exempt from penalty rate requirements contained in the Fair Work Act and other industrial instruments where employees work either less than 10 hours in a 24 hour period, or less than 38 hours in a week. These exemptions could also apply to penalties payable for evening and late night work and for public holidays.

In its submission to this inquiry the Australian Council of Trade Unions (ACTU) outlined the awards likely to be affected if the Bill became law, and the current penalty rate regime under those instruments.[1]

The ACTU identifies the following awards under which employees would lose penalty rate entitlements if the Bill were to become law:

> "The General Retail Industry Award provides:
>
> - 25% penalty for ordinary hours performed by a permanent worker on a Saturday. Casual work on a Saturday attracts a 10% penalty for work performed on a Saturday between 7am and 6pm), in addition to the usual casual loading; and
> - 100% loading for work performed on Sundays.
>
> The Restaurant Industry Award provides:
>
> - 25% penalty for Saturday work (for permanent employees, and in addition to the usual casual loading for casual employees); and
> - 50% penalty for Sunday work (for permanent employees, and in addition to the usual casual loading for casual employees).
>
> The Hospitality Industry (General) Award provides:

[1] ACTU Submission to the Senate Inquiry into the *Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012* 27 September 2012, pp 12

- 25% penalty for Saturday work (for permanent employees, and in addition to the usual casual loading); and
- 75% penalty for Sunday work (for permanent employees and inclusive of the usual casual loading).

The Fast Food Industry Award provides for:

- 25% penalty for ordinary hours performed on Saturdays; and
- 50% penalty for Sunday work."[2]

This submission will specifically address issues for those workers under the Restaurant and Hospitality Industry Awards as United Voice members primarily work under those two Awards.

[2] ACTU Submission to the Senate Inquiry into the *Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012* 27 September 2012, pp 12

6. HISTORY OF PENALTY RATES IN AUSTRALIA

Penalty rates have a long tradition in the Australian industrial relations system. As the Federal Government outlined in its submission to the Modern Award review process, penalty rates have been considered "necessary and appropriate" for almost 100 years:

> "The Government submits that a review of the history of penalty rate decisions in Australia demonstrates that penalty rates for working unsociable hours and weekends have been reflected in Australian workplace regulation for almost 100 years. The Government notes that decisions of Industrial Commissions at the state and federal level over time have determined and reiterated the position that penalty rates should be provided to compensate for work in these circumstances, even as community standards about the nature, frequency and extent of working hours have changed."[3]

As the Federal Government further outlines in its submission to the Modern Award review process the origin of penalty rates in Australia can be traced to 1919 when the Commonwealth Conciliation and Arbitration Commission held that penalty rates for work on Sundays were intended as compensation for working unsociable hours.[4] In 1947 the Commonwealth Conciliation and Arbitration Commission found Saturday work should be remunerated at 125% of the base rate, and the rate for Sunday work should be increased to double time, or 200% of the base rate.[5]

The link between social values and penalty rates has been established in law. The Industrial Relations Commission of New South Wales in 1950 considered the social disturbance of weekend work. It noted that employers must compensate employees for the disturbance to family and social life and religious observance that weekend work brings. Further the Commission specifically stated that penalty rates exist to discourage employers from working employees on weekends.[6] In this sense it is clear that the weekend is treated with a level of respect under Australian law. Not only is special compensation required for working on a weekend, but there is a deliberate attempt to discourage weekend work.

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[3] Federal Government submission to penalty rates full bench (AM2012/8 and others)
[4] *Gas Employees Case* [1919] 13 CAR 437
[5] Weekend Penalty Rates Case [1947] 58 CAR 610
[6] Re Engine Drivers General (State) Interim Award [1950] AR (NSW) 260

The lengthy history of penalty rates in Australian industrial relations and economic life are relevant on a number of points. Firstly, it demonstrates that penalty rates reflect a long tradition of values in Australian society which recognises the social and community importance of the weekend and the need to properly compensate people who work on weekends. This remains true today. Secondly, it shows that the hospitality and retail industries have always had to factor in these costs when running their businesses – this is not a new cost that employers in these industries are able to point to as reason for decline (if such decline exists which is not accepted).

7. PENALTY RATES IN THE MODERN AWARD REVIEW PROCESS

Penalty rates were a contested issue during the modern award review process in 2009. The LHMU (now United Voice) argued in favour of a robust system of penalty rates in the proposed Restaurant Industry Award. United Voice argued that the penalty rates payable in hospitality awards, including restaurant industry awards, were consistent, rather than out of step, with penalty rates in a large number of awards covering a range of industries.[7] Further, United Voice argued that any change in the level of penalty rates for the restaurant and catering industry of the hospitality industry would have potential impact upon all industries with similar hours of operation.[8]

United Voice argued that the duty on the Commission to provide a "fair minimum safety net appropriate to "a fair workplace relations system" imposes a duty on the Commission to provide fairness to employees. United Voice argued:

> "Fairness to employees means fairness to employees employed on penalty rate days and at penalty rate times. It would not be fair to reduce penalty rates without reference to the fairness that the penalty rate represents."[9]

In determining what is fair to employees, United Voice asked the Full Bench to take the following factors into consideration:

> "(a) Penalty rates are a significant component of take home pay. A reduction in penalty rates raises the question of what number of extra hours a restaurant employee would need to work to maintain their take home pay, now in part composed of penalty rates.
>
> (b) Work on penalty rate days causes inconvenience and disability in relation to family and other relationships, recreational and leisure opportunities. Current penalty rate regime provides some compensation for this disability.

[7] LHMU submission to Fair Work Australia Full bench re: Exposure Draft, proposed Restaurant Industry Award (2009), 14
[8] Ibid, at 16.
[9] Ibid, at 25.

(c) Reduced penalty rates will equal reduced earnings for low-paid workers.

(d) Savings by employers will be disproportionate to the hardship suffered by affected low-paid employees.

(e) Workers are prepared to work on Sundays and public holidays because of the payment of penalty rates; they don't necessarily want to.

(f) Current penalty rates provide an incentive for employees to accept the social inconvenience and disability of working these days.

(g) Reducing the safety net by reducing penalty rates without compensation offends against fairness and devalues the role of the BOOT in enterprise bargaining.

(h) Reducing penalty rates across the board is discriminatory: some restaurants are highly profitable and they will benefit from a windfall. Others are marginal at best, and will go out of business in time whether penalty rates are reduced or eliminated or not.

(i) There is already considerable flexibility inherent in restaurant awards and NAPSAs. The high level of casualisation means that if management makes a mistake in rostering, it can easily and quickly correct it by calling in or sending home one or more casuals.

(j) While restaurant employees know they are in or entering into a 7-day industry, they also know that they are compensated by the payment of penalty rates for working at night, at weekends and on public holidays."

The arguments put forth by United Voice in our submission to the Modern Award review process are equally applicable to the Bill before the Committee.

In its decision the Full Bench of the Australian Industrial Relations Commission paid heed to these arguments put forward by United Voice. The Full Bench outlined its task in determining the issue of penalty rates in a new restaurant industry award as follows:

> "Content of the award
>
> [193] We understand the 28 May 2009 variation to the consolidated request to require the Commission to make a modern award which takes account of the operational requirements of the restaurant and catering industry, including the labour intensive nature of the industry and the industry's core trading times, particularly in considering the penalty rate and overtime regime. Our task is to establish a modern award with appropriate terms and conditions for the industry, having regard to the terms of the consolidated request as varied, and having regard to the content of relevant pre-reform awards and NAPSAs and the weight of coverage of those industrial instruments."[10]

The Full Bench went on to compare the respective submissions of United Voice and the Restaurant and Caterers Association (R&CA) with regard to penalty rates:

> "[227] There were major differences in the drafts submitted by the LHMU and the R&CA in relation to penalty payments, reflecting very different approaches. The relevant penalties are for work in ordinary hours outside the hours of 7.00am and 7.00pm Monday to Friday and on Saturdays, Sundays and public holidays, for full-time, part-time and casual employees.
>
> [228] The LHMU based its draft on the Victorian Restaurant Award, which is also consistent with the Hospitality Modern Award. The R&CA draft was based in some respects on the NSW Restaurant Award but it relied primarily on the operational requirements of the industry and in particular the seven days a week operation of restaurants, predominantly at times directed to the provision of lunches and dinners."[11]

The Commission summarised the R&CA's submission as "based on an overriding conviction that penalty payments should be minimal or non-existent during any periods when

[10] Statement on Award Modernisation [2009] AIRCFB 865, 193.
[11] Ibid, 227

restaurants trade."[12] Ultimately the RCA's approach to penalty rates did not find favour with the Full Bench:

> "[232] The R&CA's approach is directed at substantially reducing or eliminating penalty payments provided for in existing instruments applying to the restaurant industry during times when restaurants are open. That approach ignores the inconvenience and disability associated with work at nights and on weekends – which are the basis for the prevailing provisions in pre-reform awards and NAPSAs. Nor does the R&CA approach take into account the significance of penalty payments in the take-home pay of employees in the restaurant industry. A modern restaurant award based on the penalty rates proposed by the R&CA would give the operational requirements of the restaurant and catering industry primacy over all of the other considerations which the Commission is required to take into account, including the needs of the low paid and the weight of regulation. A more balanced approach is required."

"It would make me rethink working in hospitality. The reason why I get those penalty rates is because I'm missing out on time with my family and friends and I would question why I would bother".

- Monique, Restaurant worker

[12] Ibid, 231

8. THRESHOLD QUESTION - NO VALID REASON TO EXEMPT RESTAURANT AND CATERING

The Bill proposes a removal of penalty rates for small businesses in the restaurant and catering industry. Given that the Bill is seeking to discriminate against employees in a certain range of industries, a threshold question must be answered - why are small businesses in this industry a special case in need of an exemption to what is an otherwise accepted community standard?

In United Voice's opinion, before an Australian parliament took the very significant step of removing one set of rights and entitlements from a group of workers, it would need to be presented with overwhelming and inarguable evidence in favour of that proposition.

In order to demonstrate that businesses covered by the Bill fall into a special or unique category proponents must demonstrate not only a sound economic case for a drastic reduction in penalty rates, but also a social case. Penalty rates perform not only an economic function but also an important social function. By compensating workers who work on weekends or at night penalty rates protect and enhance family and community life in Australia.

Employer groups and other supporters of the Bill have not put forth either a rigorous economic or social argument to support the idea that the restaurant and catering industry is a special case. Consequently, on equity grounds alone, the Committee should not support passage of the Bill.

9. IMPACT OF THE REMOVAL OF PENALTY RATES

a) The removal of penalty rates would in fact have a detrimental Impact on the broader economy

Contrary to the view put by employer groups, there is a valid economic argument in support of a robust penalty rates regime. United Voice challenges the notion that penalty rates harm businesses, or harm the economy.

The removal of penalty rates constitutes a simple transfer of value away from workers in the restaurant and catering industry and toward employers in the form of increased profits. However, beyond the distribution of value in the industry, the removal of penalty rates would also have an impact on the broader economy through the lowering of aggregate demand.

73% of workers in Accommodation and Food Services work on weekends[13]. The Restaurant and Catering industry accounts for 773,400 of Australia's 11.5 million workers, meaning this proposal amounts to asking approximately 550,000 workers taking a pay cut. This would have a significant impact on consumer spending power as a direct result of the loss of penalty rates. Not only would this have a substantial impact on the workers in question, this would lead to lower rates of consumer spending across the whole of the economy.

The ACTU estimates that the Bill will significantly reduce the take-home wages of over 500,000 workers in small businesses in the retail and accommodation and food services industries. Almost half of these workers are paid at minimum award rates and rely on penalty rates to make ends meet.[14]

b) Setting a Precedent for other Industries

United Voice is very concerned that should the Bill become law, the erosion of penalty rates will not stop at those industries covered by the Bill. The reason for this is simple. If the

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[13] http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/LookupAttach/4102.0Publication10.12.096/$File/41020_Patternsinwork.pdf

[14] ACTU Submission to the Education, Employment and Workplace Relations Legislation committee inquiry into the *Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012* 27 September 2012, 12.

Australian Parliament accepts the ideas behind this Bill as fact; that the weekend is not special, and workers should not be compensated for loss of time with family and community, then it allows employer groups in other industries to push for similar treatment. The notion that weekend and night work should have some protection in law flows from long held community standards around the importance of family and social life in Australia. Penalty rates are a values issue as much as they are an economic or industrial one.

Therefore when examining the Bill the Committee should have regard not only to the 500,000 workers who will see a reduction in pay the Bill were to become law, but also to the millions of Australian workers who could suffer from a similar reduction in penalty rates in the near future. Certainly if the ideas behind this Bill were to catch hold in the Parliament virtually all United Voice members would be in line for an attack on their penalty rates.

c) Low Paid Workers Rely on Penalty Rates

A significant proportion of the restaurant and catering workforce receive penalty rates in the course of their employment. In 2008, the ABS estimated that approximately 72% of workers in the Accommodation and Food Services industry usually work on the weekend. By contrast, only 28% of workers in the industry have patterns of work which vary each week. The removal of penalty rates therefore, amounts to an assault on the wages and conditions of restaurant and catering employees. This can be seen in the general negative trend of the labour share of income in the industry declining from 81% in 1994-5 to 76% in 2010-11.[15] This is compounded by the fact that the industry in question is one of the most poorly remunerated in Australia with 45% of workers in the industry being paid at award rates.

The following are qualitative examples of workers in the industry who are also members of United Voice and their perspective on what it would mean to lose penalty rates in the restaurant and catering industry:

[15] Australian Bureau of Statisitcs. Experimental Estimates of Industry Multifactor Productivity, 2010-11 (Cat no. 5260.0.55.002)

- Timothy works in a Queensland restaurant and says, “Without penalty rates, I would have to change career completely, get out of the industry. I couldn't make ends meet without penalty rates.”

- Carole works in restaurants and catering in South Australia, “Without penalty rates, it would be hardly worth going to work. I start at 2am, 5 days a week. It would have a massive financial impact on me and my family.”

- For Angela, a restaurant worker in Western Australia, “I do most of my hours on weekends. Losing penalty rates would have a huge financial impact on my life.”

d) Impact on labour supply

Employers in the hospitality and restaurant industries claim labour shortages are a significant issue facing the sector. Employer groups loudly proclaim problems attracting and retaining staff. Employers have gone as far as advocating for a template labour agreement designed to bring in overseas workers to fill vacant jobs in the sector. United Voice contends that the passage of the Bill would only exacerbate the problems facing the sector. Unsociable hours are only compensated for by the current penalty rates regime. If this compensation were to be removed, and these jobs were devalued as a result, employers would find their labour shortage problems would only increase. Therefore the passage of the Bill would exacerbate labour shortage issues and open the door to a strong employer push for the importation of overseas workers into the hospitality and restaurant sector.

10. EMPLOYER ARGUMENTS

Employers generally rely on a small number of time honoured arguments in favour of a reduction in penalty rates. These arguments are set out below. However it is important to remember that as with most industrial issues the motivations of employers are driven by either control and/or cost. In this case all arguments in favour of a reduction of penalty rates represent an attempt by employers to drive down costs through cutting take home pay to employees.

A cogent articulation of arguments in favour of a reduction in penalty rates is set out in various submissions to Fair Work Australia during the Modern Award Review process.

The most prominent arguments include:

- **Increased labour costs are hurting the restaurant and catering industries. Wages growth is forcing businesses to cease trading on weekends -**

  "The increase in penalties has significantly increased labour costs for retail employers. Anecdotal evidence from retail employers in South Australia suggests that as a result of this cost increase, rather than employing staff on Saturdays and Sundays, business owners elect to work these days themselves. Others have elected to remain closed on Sundays due to the high costs associated with Sunday trade."[16]

  Similarly, employer groups argue that labour costs are the majority of business costs-

  "Labour costs reflect close to 50% of total expenditure applicable to businesses in the restaurant and catering industry."[17]

- **We have changed to a 24/7 economy, in which business and employees desire flexibility.**

  "Consumer preferences and expectations as to the times they expect retailers to be open have changed from the conventional Monday to Friday 9am to 5pm trading

[16]Business SA submission to Modern Award review, available at http://www.fwa.gov.au/documents/awardmod/review/AM20128&ors_sub_bsa.pdf, 6
17 Restaurant and Catering Industry submission to Modern Award review, available at http://www.fwa.gov.au/documents/awardmod/review/AM2012189_amended.pdf, 18

hours to extended trading hours that provide for seven days a week operations. No longer are these hours seen as being unsociable hours."[18]

Further, "the penalty rates regime is characterised by "inflexibility for those workers who prefer to work weekends, public holidays etc. due to family or other commitments."[19]

Similarly, some employers argue that certain industries are 24/7 in nature -

"Concerns raised by businesses in relation to modern awards included…not recognising the 24/7 nature of some industries ie tourism, retail, hospitality."[20]

The remainder of this submission will address the substance of these arguments.

10.1 INCREASED LABOUR COSTS ARE HURTING THE RESTAURANT AND CATERING INDUSTRIES

As outlined above, employer groups often claim that increased labour costs through the imposition of penalty rates are hurting the hospitality industry. United Voice rejects this argument for the following reasons -

a) Wages have not grown relative to incomes and expenses

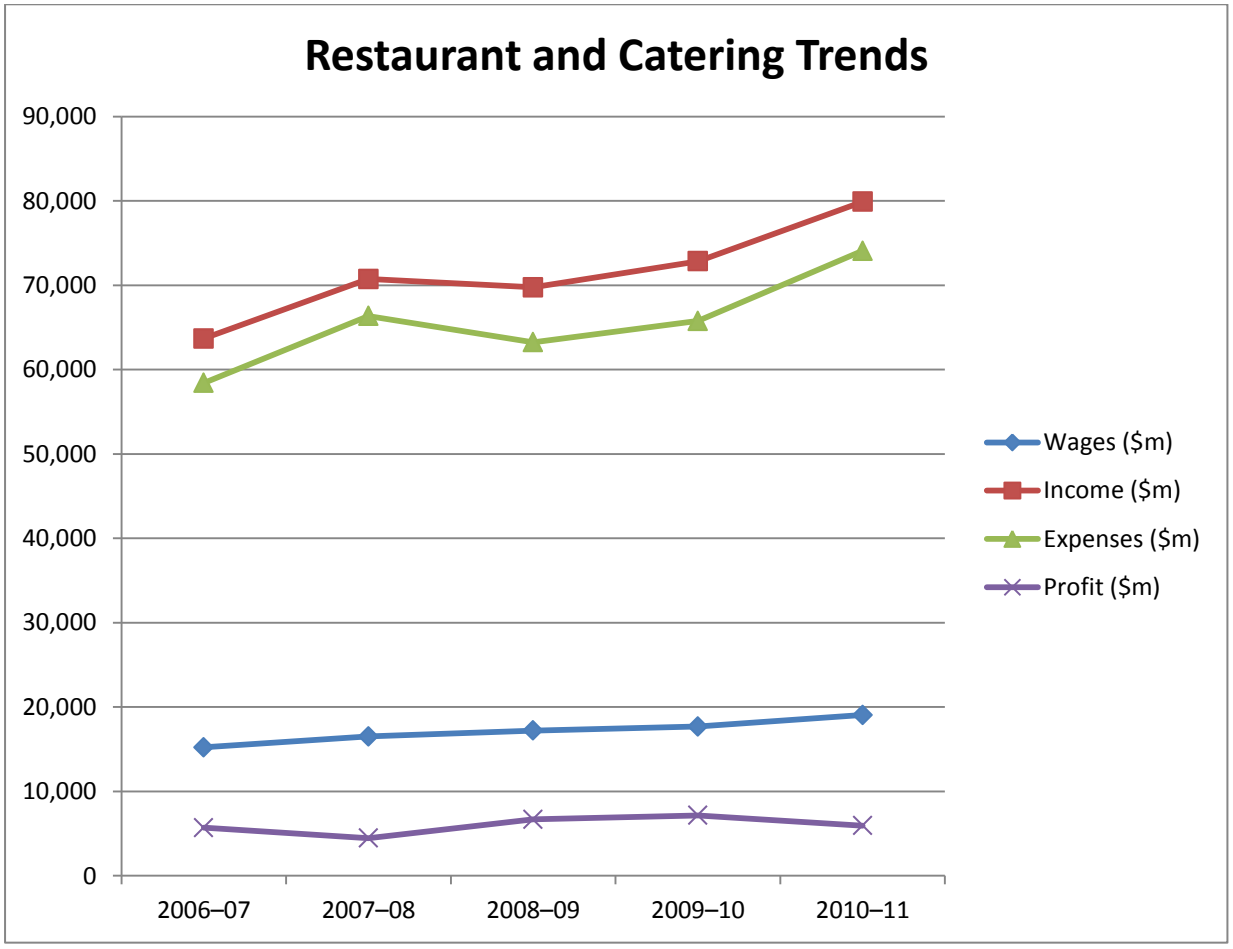
The average labour cost in the Restaurant and Catering Industry has experienced modest growth from 2006 to 2011 at 14% over this 5 year period.[21]

The following graph (Figure 1) from the Australian Bureau of Statistics (ABS)[22]demonstrates that the industry has been on a significant growth path over the past 5 years in terms of income. This has been matched by growth in the level of expenses. What the graph also demonstrates however is that wages and wage growth are a very small part of expenses and

[18] Chamber of Commerce and Industry WA submission to Modern Award Review, available at http://www.fwa.gov.au/documents/awardmod/review/AM20128_sub_cciwa.pdf, 3
[19] Chamber of Commerce and Industry QLD submission to Modern Award review, http://www.fwa.gov.au/documents/awardmod/review/correspondence_CCIQ.pdf, page 2.
[20] Ibid, 1
[21] Australian Bureau of Statistics.. Labour Price Index, Australia, Jun 2012 (Cat. No. 6345.0)
[22]Australian Bureau of Statistics. Australian Industry 2010-2011 (Cat no 8155.0)

expense growth, thus the idea that businesses are reducing their trading hours due to employment costs associated with penalty rates is disingenuous.

FIGURE 1



The data in Figure 1 is reinforced by the Table 1 below which demonstrates that wages as a percentage of overall expenses have not substantially changed in the last 5 years.[23] This suggests that there are other causes for the fall in the rate of profit which need to be examined.

[23] Australian Bureau of Statistics. Australian Industry 2010-2011 (Cat. No. 8155.0)

TABLE 1

Restaurant and Catering – Wages vs Expenses	
Year	Wages as a % of Expenses
2007-8	24.9
2008-9	27.2
2009-10	26.9
2010-11	25.7

b) Wages are not the reason for declining profits. Declining profits are being caused by an increase in overall expenses which are hurting Australian households and restaurants alike.

While the share of wages in the Restaurant and Catering industry have remained stable as a percentage of total expenses, a number of prices that drive the expenses of the industry have grown significantly in the past 5 years. This appears to be the structural cause of the industry's falling rate of profit.

A snapshot of price increases based on ABS data from June 2007 to June 2012 demonstrates prices not only impact on workers and households generally in Australia, but also would have a substantial impact on the Restaurant and Catering Industry by reducing profits.[24] Prices are compared to wages growth in the same period in Table 2 below.[25]

[24] Australian Bureau of Statistics.. Consumer Price Index, Australia, Jun 2012 (Cat. No. 6401.0)
[25] Australian Bureau of Statistics.. Labour Price Index, Australia, Jun 2012 (Cat. No. 6345.0

TABLE 2

CPI and Labour Cost Variations from 2007-12	
	Change % from 2007-12
Rent	+31
Water	+72
Electricity	+73
Gas	+45
Insurance	+38
Labor Costs (2006-11)	+14

What this data suggests is that value that would have otherwise been held within the industry is instead now flowing to other industries as prices have risen faster than turnover in the same period.

c) Global Financial Crisis Did Not Impact Restaurant and Catering

Proponents of stripping penalty rates from conditions of employment often claim their business is still suffering the effects of the global financial crisis. In relation to the hospitality industry this is patently not the case.

As demonstrated in Figure One above, income in the restaurant and catering industry dipped only marginally during the global financial crisis before returning to a growth path. Industry turnover consistently rose far beyond wage growth.

d) Competition is causing suboptimal industry performance

Anecdotally, there have been suggestions that competition is causing the industry to be less profitable than it could be. This casts doubt not only on industry claims that rising wages and/or penalty rates are the root cause of unprofitability, but also on the worth of the free market approach to the development of industries. The following observation was made in an assessment of the Restaurant and Catering Industry Action Agenda in 2007:

"Many in the industry observed that new low quality entrants to the industry often do not have the appropriate skills, and often leave the industry within a year to 18 months after entering. This 'churn' of operators entering and leaving the industry is considered damaging because:

- lower quality entrants tend to drive down prices in the local area;
- operators that do not comply with employment or tax requirements (for example, businesses who pay 'cash in hand') are able to undercut operators who do comply; and
- poor quality service and food damages the reputation of the entire industry, and in particular other restaurants in the same locality"[26]

This anecdotal evidence is supported by evidence in terms of business entrants and exits from June 2007 to 2011[27]. While there is huge churn in the industry (only 51% of businesses operating in 2007 are still operating in 2011), business exits do not equal failures. Data on exits include mergers and acquisitions which are extremely common. Only 11% of all business exits are due to insolvency. At the start of 2009-10 financial year there were 77365 businesses in the industry. 12425 businesses left the industry, but 14861 entered the industry for a net gain of 2436.[28]

e) Incompetence hurts the industry

Reports from external administrators provided to ASIC in 2010[29] indicate that the majority of businesses in the Restaurant and Catering industry which become insolvent, do so primarily due to business incompetence at 61%. ASIC reports that these were due to poor strategic management (19%), inadequate cash flow (17%), poor financial control including lack of records (14%), under capitalisation (9%), poor management of accounts receivable (2%)

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[26] http://www.ret.gov.au/tourism/documents/tourism%20industry%20development/restaurant_and_catering_allen.pdf

[27] Australian Bureau of Statistics. 8165.0 - Counts of Australian Businesses, including Entries and Exits , Jun 2007 to Jun 2011

[28] Australian Bureau of Statistics. 8165.0 - Counts of Australian Businesses, including Entries and Exits , Jun 2007 to Jun 2011

[29] http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ASIC-Insolvency-statistics-series3.2-Dec2010.pdf/$file/ASIC-Insolvency-statistics-series3.2-Dec2010.pdf

Only a small number could have any relationship to wages or the economic collapse: trading losses (17%) or poor economic conditions (10%), however as previously stated on average, wages have not grown as a proportion of expenditure.

10.2 WE HAVE CHANGED TO A 24/7 ECONOMY IN WHICH BUSINESS AND EMPLOYEES DESIRE FLEXIBILITY

This is a view often put by employers and business lobby groups. However it fails to take into account that the lives of most Australian families are still structured around a typical standard hours, Monday to Friday work week. Further, it begins with the false assumption that Australian workers desire 'flexibility' in work arrangements more than they do compensation for the loss of family, social and spiritual time.

> "No way. Why would I? You work a lot harder on weekends and miss time with family and friends, there's no way I'd do this without more pay."
>
> - William, Restaurant worker

a) Historical reasons for penalty rates

Penalty rates for work undertaken outside normal hours, at night or on weekends, have long been enshrined in our Industrial landscape (see section 6 above). It has been accepted that people working unsociable hours should be provided some compensation for the inconvenience of working these hours. Additionally penalty rates were an attempt to discourage weekend work. While weekend work may have become more common the penalty rate system still has a role to play in ensuring excessive hours are not worked over weekends.

Underpinning penalty rates is the concept that family, social and leisure time is an important factor in people's lives, that it contributes to improved health and wellbeing outcomes and thus the restriction of this important time be financially compensated for.

b) Importance of weekends

Research has shown that workers in service industries, such as restaurants, have worse work life interference than those in industries with more traditional hours of work, and that this work life interference leads to -

> "Poorer health, more use of prescription medications, more stress, and more dissatisfaction with close personal relationships (as our 2007 findings showed). Work–life outcomes are imposing high costs on individuals, families and the broader community."[30]

A recent International Labour Organisation (ILO) report, surveying literature from Europe, North America, Australia, Japan and Latin America found working non-standard or unsociable hours had negative impacts on workers including the following[31] -

- "employees working at weekends report significantly higher emotional exhaustion, job stress and psychosomatic health problems than employees not involved in weekend work".

- "people working on Saturdays are more likely to report health effects than those who do not, and people working on Sundays are more likely to report problems than those not doing so. Sunday working appears to have an even greater impact on health than Saturdays."

- "workers are more likely to report health problems if they work at least one evening a month than those who do not working evenings (66 as against 54 per cent), as were those working at least one night compared to those not working nights (68 compared with 57 per cent)."

[30] Pocock, B. Skinner, N. & Pisaniello, S. (2010) *Australian Work and life Index 2010. How Much Should we work? Working Hours, holidays and working life: the participations challenge*. University of South Australia.
[31] Fagan, Colette. Lyonette, Clare. Smith, Mark and Saldaña-Tejeda, Abril (2012) The influence of working time arrangements on work-life integration or 'balance': A review of the international evidence. ILO Conditions of Work and employment Series. No. 32

- “working shorter hours does not appear to resolve work-life conflict issues for those on atypical working schedules. Complicated child-care arrangements, combined with reduced traditional family time at weekends and in the evenings, appear to reduce parental satisfaction with atypical working schedules, even when the working hours are relatively short.”

- “parents report a lack of time with other family members, but also a reduction in the time available for specific activities.”

- “Non-standard schedules can have negative outcomes for the quality of marital relationships.”

- “Relationship quality with other family members can suffer as a consequence of atypical working schedules.”

- “Shift work also has negative impacts on women’s reproductive health.”

These studies clearly demonstrate a link between non-standard hours of work and social and physical disruption. Any assertion that we have ‘moved to a 24/7 economy’ should be viewed for what it is, a callow attempt on the part of employers to dismiss the concerns of working people who fear for the disruption of their normal lives were penalty rates to be removed.

c) Public support for penalty rates

Australians overwhelmingly support protecting weekends with penalty rates. A recent national study by Galaxy research showed that 87% of adult Australians believe workers should be compensated with higher pay if they are required to work on Saturday or Sunday.[32] This high level of agreement is observed across all demographic groups and all

[32] For complete results of the Galaxy research see United Voice’s submission to the Modern Award Review “Penalty rates and Public Holiday issues: Supplementary submission and witness statement,” available at <http://www.fwa.gov.au/documents/awardmod/review/AM2012215_sub_uv.pdf>

states of Australia. It is interesting to note that agreement with the idea of penalty rates for weekend work is especially high among younger Australians, with 95% agreement among those aged 18-24 years and 91% agreement among those aged 25-34 years.

11. CONCLUSION

As discussed throughout this submission penalty rates have had a long history in our industrial relations system. This is for good reason. Time spent on weekends with family and friends and in leisure is important. It mitigates negative health impacts and provides rest and wellbeing. It creates cohesive relationships with families, friends and community and allows for contribution to civic society. Penalty rates are also a vital income source for low paid workers.

Arguments put by employers to abolish penalty rates are based on spurious economic claims, accepting these claims would undermine established and cherished societal norms about the importance of compensation for time missed with family and friends. In this sense penalty rates are more than an economic tool, they are a reflection of the values of the Australian community. The process of removing penalty rates from the Australian industrial landscape, which this Bill represents, would have far reaching effects across Australian community and civic life.

To abolish penalty rates in this or any other industry would be to undermine nearly 100 years of industrial history. To do so on the basis of arguments uncorroborated by any evidence, and indeed where the evidence points in the direction of their retention, would be an unconscionable act by an Australian parliament.