



9 October 2012

Committee Secretary
Senate Education, Employment and Workplace Relations
Legislation Committee
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Dear Committee Secretary,

Re: Inquiry into the *Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012*

The Australian Industry Group (Ai Group) makes this submission to the Senate Education, Employment and Workplace Relations Legislation Committee in its inquiry into the *Fair Work Amendment (Small Business - Penalty Rates Exemption) Bill 2012*.

Ai Group is one of the largest national industry bodies in Australia representing employers in numerous industries.

The Bill, if enacted, would provide a benefit to “small business employers” in the restaurant, catering and retail industries. It is evident that many employers in these industries are struggling to cope with the level of penalty rates in modern awards. Many employers in these industries experienced significant cost increases in 2010 when modern awards were introduced given the lower penalty rates that previously applied under pre-modern awards. In many cases the full impact of the cost increases has not yet been felt because transitional arrangements in modern awards phase-in higher penalties over the period up to 1 July 2014. For these reasons, Ai Group is supportive of the intent of the Bill.

The coverage of the Bill

The Bill does not define the restaurant, catering and retail industries. If the Bill is to be enacted it would be logical for these industries to be defined in the Bill in similar terms to the modern awards which cover these industries.

There are a number of modern awards which cover the restaurant, catering and retail industries.

During Stage 1 of the award modernisation process, the Australian Industrial Relations Commission issued an Exposure Draft for a *Retail Industry Award 2010* with broad coverage but ultimately decided to create the following retail industry awards:

- *General Retail Industry Award 2010*;
- *Fast Food Industry Award 2010*;
- *Hair and Beauty Industry Award 2010*; and
- *Pharmacy Industry Award 2010*.

The restaurant industry (other than fast food restaurants) is covered by the *Restaurant Industry Award 2010*.

The catering industry is generally covered by the *Hospitality Industry (General) Award 2010*.

It is proposed that the Bill be amended to add the following definitions:

“restaurant and catering industry means the industries covered by the following awards as they operated on 1 January 2013:

- *Restaurant Industry Award 2010*;
- *Hospitality Industry (General) Award 2010.*”

“retail industry means the industries covered by the following awards as they operated on 1 January 2013:

- *General Retail Industry Award 2010*;
- *Fast Food Industry Award 2010*;
- *Hair and Beauty Industry Award 2010*; and
- *Pharmacy Industry Award 2010.*”

Problems with the level of penalty rates in the fast food industry

The fast food industry has a number of unique characteristics.

Prior to the introduction of modern awards, most fast food companies did not pay weekend penalty rates under the state awards and enterprise awards which applied to them. A large percentage of the businesses in the industry are small business franchisees.

The *Fast Food Industry Award 2010* is having a significant negative effect on the industry. As part of Fair Work Australia's Review of Modern Awards 2012, Ai Group has applied to vary the award to reduce penalty rates for ordinary hours on behalf of the major fast food chains.

The modern award currently requires that penalty rates be paid:

- For hours outside of 6am to 9pm on weekdays;
- On Saturdays (time and one quarter, plus a 25% loading for casuals); and
- On Sundays (time and three quarters, plus a 25% loading for casuals).

In the award proceedings, Ai Group is seeking that penalty rates not be payable between 5am and 10pm, 7 days per week. Peak times for fast food outlets are early mornings (for breakfast), evenings and weekends and Ai Group is arguing that penalty rates should not be payable at these peak times. Penalty rates should not be payable at the times when the employees prefer to work. The industry employs a large number of young people who are only available outside of school hours.

Public holidays

The Bill would result in penalty rates not being payable by “small business employers” on a public holiday unless an employee has worked more than 38 hours during the week or more than 10 hours on the day. The level of public holiday penalty rates payable by small employers in the restaurant, catering and retail industries is causing hardship for many employers and therefore the Bill has merit.

However, ideally the Bill would be amended to address the recommendation of the Fair Work Act Review Panel. The Panel has recommended that there be 11 nationally consistent public holidays each year for which penalty rates are payable under modern awards, and that this number should not be able to be increased by State and Territory Governments declaring additional or substitute days. The Bill should be amended to implement this recommendation for employers of all sizes. For “small business employers” as defined in the Bill logically penalty rates would only be payable on these 11 public holidays if an employee has worked more than 38 hours during the week or more than 10 hours on the day.

The public holiday arrangements in Australia are extremely unsatisfactory for employers with a great deal of inconsistency between States and Territories. Currently the National Employment Standards in the *Fair Work Act 2009* leave it open to State and Territory Governments to declare additional public holidays beyond those specified in the Act. When a public holiday falls on a weekend it is common for some State or Territory Governments to declare an additional public holiday on the following Monday, thereby requiring employers to pay public holiday penalty rates to staff on two days instead on one.

Ai Group would be happy to provide further information about the above issues should the Committee require it.

Yours sincerely

Stephen Smith
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