



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

**THE AUSTRALIAN RETAILERS ASSOCIATION**

**SUBMISSION**

**SEPTEMBER 2012**

**Australian Retailers Association**

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**Australian Retailers Association**

**- Voice of the Retail Industry**

Since 1903 the Australian Retailers Association (ARA) has been the peak industry body representing Australia's \$240 billion retail sector which employs over 1.2 million people. The ARA ensures retail success by informing, protecting, advocating, educating and saving money for its 5500 independent and national retail members throughout Australia. Visit [www.retail.org.au](http://www.retail.org.au) or call 1300 368 041.

The ARA provides leadership and solutions to improve the long-term viability, productivity and visibility of the retail industry by proactively dealing with Government, media and other regulatory bodies on behalf of members. ARA members comprise a diversity of sizes and types of retailers reflecting the profile of the retail industry, ranging from large national chain retailers to one-person operators throughout the nation.

Retailers in Australia are facing an increasingly difficult operating environment. In the last ten years, the structure of the retail sector has shifted and evolved as a result of globalisation, advances in the digital economy and changes to business practice policies (such as employment). In addition, the retail sector has experienced various economic environments with the Global Financial Crisis and fluctuating Australian dollar having a significant effect on the performance of the industry. The ARA offers support, information, and representation to around 5500 retailers across the nation, and works closely with Government and other industry participants to ensure the long-term viability and position of the retail sector as a leading contributor to Australia's economy.

The ARA and its members have a strong vision for the retail industry – based on well regulated markets and growth, productive and innovative businesses, responsible collective initiative supported by Government where appropriate but removing Government burden where possible and appropriate.

We are committed to promoting retail as a viable and exciting career choice for young people, and to retaining and developing the highest standards of practice within individuals and groups at all levels of our industry while advocating and assisting members to deal with new technologies and a changing trading environment.

We are focused on providing members with the information, knowledge and skills necessary to operate more effectively in employment relations and skills growth in an increasingly competitive retail environment.

Our members range from small sole operator enterprises to medium, large, independent, chain and franchise stores of all types and sizes. Over 80% of our membership consists of businesses ranging from one to five stores with most of that number employing less than 200 staff.

ARA membership and retailers in general have experienced significant compliance issues regarding implementation of the Fair Work Act. Larger retailers have been working with Fair Work Australia's (FWA) employment relations and training team to improve their skills and knowledge however we are experiencing significant education and knowledge **issues within the small to medium retailer category** based on our own evidentiary work and also backed up by work done by FWA.

## DISCUSSION POINTS ON THE NEED FOR PENALTY RATE REFORM

### PENALTY RATES

Retailers in Australia are finding the cost of doing business to be increasingly onerous. Although a high Australian dollar is good for both consumers and retailers in terms of purchasing goods for a better rate from overseas, this has created a trade exposure of 24 hour seven day a week trading through online business.

To compete, Australian retailers must operate when consumers want. ARA survey work indicates peak trading times for retailers are over weekend periods, however wage structures don't reflect this and nor does flexibility.

It must be stated that the requirement for retail businesses to comply with the Federal Government's Award modernisation process has also placed an added challenge to retailers as employers. Specifically, the rising cost of labour required through Fair Work Australia (FWA) does act as a disincentive to retailers to retain its relatively low-skilled workforce at a time when trading conditions are incredibly slow. Moreover, the productivity of workers in retail is not necessarily in line with the award modernisation policies, Australian retail is yet to show any signs of a sustained recovery. Australian consumers are unable to accept, either

fiscally or philosophically, any rise in retail prices to the detriment of retail viability. They're also being faced with rising cost-of-living pressures which severely reduce discretionary spending.

There is a risk that small retailers may have to close down for lack of profitability. There is direct evidence retailers of all sizes find trading on Sundays in particular marginal at best. Some owner- operators can only open if they man the stores themselves while others will simply not open because it is not viable due to penalty rate structures.

In ARA's March submission to FWA on the Modern Award Review 2012, ARA called for the General Retail Industry Award (GRIA) Review to consider modern retail conditions, consumer demand for 24 hour seven day a week shopping and the need to promote employment in a sector responsible for 1.2 million jobs.

The push to review a number of issues such as penalty rates and retail employment conditions were for retaining employment and allowing Australian retailers to reach their consumers according to the workings of a modern shopping economy.

The objective of the retail award is to set a minimum safety net for both employers and employees. However, retailers are increasingly concerned this minimum safety net is too high, leading to substantial labour cost pressures which poses a threat to long term employment and viability.

The ARA has recommended key Modern Award reforms to FWA in its submission, including:

1. **Variation to the definition of 'general retail industry' to include online retailing** of goods and services, ensuring those employed in online retailing are covered under the Award.
2. A **reduction in the Sunday penalty rate from 100 percent to 50 percent** would assist in the challenges facing the industry to trade seven days a week while ensuring employees have access to jobs and flexible hours.
3. **Removal of unnecessary administration involved in changing the hours of a part time worker by agreement**, which impedes both part timers' access to flexible hours and employers' ability to ensure hours worked are productive.
4. **Reducing the minimum shift requirement for employee training sessions** to allow retailers to adequately train staff, which they are currently unable to do without significant costs involved.

While many retailers desire no penalty rates to be implemented on weekends ARA has decided to pursue what is achievable through the FWA process and has taken input from many retailers who have indicated some level of compensation is appropriate for out of normal hour work. The same survey work ARA has been undertaking as part of the Modern Award Review has also shown the need to reduce operating costs through wages to a more sustainable level.

We have direct feedback from our members that due to additional trading costs and price pressure from overseas goods retailers are closing stores and reducing staff. In many cases our survey work has indicated this has been as a result of penalty rate wage costs.

Reducing the Sunday penalty rate from its current level of 100% to 50% will reduce what is a substantial cost to employers, while at the same time retaining a penalty which appropriately compensates employees for working on Sundays.

It is also important to consider there will be a substantial number of employees in the retail industry who work on Sundays because it suits their needs. 63.5% of respondents to ARA's survey said they had no difficulty in securing staff to work on weekends.

One key change as a result of societal change and relaxed retail trading hours has been the emergence of Sunday as a key trading day, coupled with a reduction in the significance of weekday trade. In ARA's survey of members, 76% of respondents cited weekdays as their least busy trading times.

68.2% of respondents to ARA's survey said their business is open every day of the week. The GRIA needs to move away from hours of work and penalty structures that reflect a five and a half day trading week. Retail is a seven day per week industry and needs the GRIA to recognise and promote this.

As consumers increasingly choose to shop on Sundays retail businesses are required to increase staffing levels to match this demand. Notably, respondents to ARA's survey have identified that while penalty rates are a substantial reason why staff choose to work weekends, with 53.8% of respondents saying this is a factor, they also cite lifestyle (39.9%) and availability (45.5%) as reasons for their preference.

Clearly the reduction of the Sunday penalty rate from 100% to 50%, particularly in circumstances where Sunday represents such a substantial trading day, will reduce employment costs for retail businesses. Naturally this benefit needs to be balanced against the need to ensure the minimum safety net is fair on employees. It is ARA's submission that a penalty of 50% for Sunday work strikes the correct balance between these competing considerations.

ARA finds the intention of this Bill admirable as it stimulates serious discussion on the penalty rate issue for the retail and hospitality sectors, and believes penalty rates must be addressed for all businesses.

## ISSUES TO BE ADDRESSED IN THE BILL

### MARKET DISTORTION

The ARA wishes to address some unintended potential issues around the Bill. While lower rates would be of significant benefit to small retailers, ARA can report many of its members would employ more than 20 full time employees (FTE), in some instances in a single store. Hardware stores are a prime example of a single store small business employing many staff and another example would be hairdressers. There is also a concern on the limit acting like an additional tax which would restrict a retailer from expanding beyond 20 FTEs without having their business model impacted and could cause them to cap expansion of their staff numbers and business. The ARA would therefore like to ask what measures would be in place to address a retailer creating multiple entities to work around the cap, and whether this would have the potential of acting as a retardant for employees applying for positions in small retail businesses or going over the road and applying for work in their bigger, higher paying competitor.

Taking a job across the road in a large business would be an unintended consequence of this Bill and the small retailer could be forced to match the other business employing over 20 employers in order to attract or retain or attract employees, thereby defeating the purpose of the Bill.

ARA ultimately wants penalty rates reduced and will support this process. We also want to see the possible market distortions addressed in this Bill to allow successful implementation.