

20 September 2012

Senate Standing Committee on Education, Employment and Workplace Relations
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Members,

On behalf of the Queensland business community, the Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to make a submission to the Standing Committee's Inquiry into the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 (the Bill).

Overview

As Queensland's peak industry body, we are focussed on working with all levels of government to create a business environment that promotes flexibility and growth. Keeping employee costs at a sustainable level is a key part of this. A number of Queensland's major industries, including tourism, hospitality and retail, operate for extended trading hours across seven days a week, for extended trading hours, and are characterised by seasonal peaks. This means that penalty rates, which emanate from a '9-5, Monday to Friday' conception of the working week, are impractical and expensive.

Employers from a range of industries frequently tell us that while they have staff eager to work on the weekend rather than during the week, they simply cannot afford to pay up to three times the normal award rate. Consequently, trading on a Sunday leaves many small businesses in a difficult position, as their choices are often to simply close, operate during restricted hours, put fewer staff on, or to 'run a loss'. These are not the choices that should confront small businesses in a modern economy.

Passage of this Bill would ensure that a modern award cannot require a business employing fewer than 20 full-time employees in the restaurant and catering or retail industries to pay penalty rates to an employee unless they have worked more than 10 hours in a 24 hour period, or more than 38 hours total, in that week. CCIQ supports the Bill as a balanced and common sense amendment to the *Fair Work Act 2009* (the FW Act) that would provide employers with greater flexibility with respect to rostering, and allow employees to work more shifts if they so choose.

However, CCIQ considers that these changes should not be limited to certain industries: penalty rates impact on all small businesses, regardless of the industry in which they operate. We therefore consider that the proposed exemption should be applied across modern awards in all industries.

Modern Awards Review

CCIQ recognises that Australia's modern awards system provides a safety net for employees within particular industries and/or occupations. Queensland businesses have generally welcomed the award modernisation process for the manner in which it streamlined and simplified the award system, aside from the general increases in award rates that occurred as part of the process. It is essential that these awards contain fair and relevant minimum terms and conditions of employment that appropriately relate to the specific circumstances and operating environments of the industries to which they relate.

As part of our submission to Fair Work Australia's current Modern Awards Review, we addressed a number of issues that our members have identified with the awards. The overarching concern that we expressed on behalf of our members was that the modern award simplification process was accompanied by substantial cost increases without any corollary flexibility or productivity trade-offs. The operation of weekend penalty rates are central to this problem, and consequently CCIQ has called on the Modern Awards Review to alter the operation of penalty rates so as to allow for greater flexibility in businesses that operate for seven days a week or outside 'standard' trading hours.

"When the modern awards were introduced, we were told it would not have a negative impact nor an increase in wages. This is not true for many business owners."

- Gold Coast Business Operator in the Accommodation and Food Services industry

Penalty rates

Many employers have raised concerns regarding the impact of the penalty rates regimes and increased employer obligations surrounding allowances on the competitiveness and profitability of their business. These concerns come from those businesses that operate seven days a week or outside of 'normal trading hours' (9am to 5pm Monday to Friday), including the retail, tourism, accommodation, hospitality and agricultural industries. Increased wage costs have resulted in businesses closing for longer periods or reducing staff numbers, which have negative flow on effects for employees, communities and the economy.

"Weekend penalties are unfair to an industry trading 7 days per week and an impediment to full time employment. They resulted in no productivity gain and are generally bad for the economy."

- Central Coast Business Operator in the Accommodation, Cafes and Restaurants industry

Unions frequently claim that shifts attracting penalty rates are 'unsocial shifts' that should be compensated accordingly. This claim is not only false, but makes broad assumptions about the nature of individual lifestyles and choices, whereby particular employees prefer to work during the evening or on weekends or public holidays. That is, employees want flexibility too.

The current policy behind penalty rates represents a failure to recognise the requirements of key industries for workable terms and conditions of employment that foster sustainable and profitable

industries. The current penalty rate regime inhibits economic growth by disincentivising employers from having longer trading hours or offering staff additional hours.

This is of serious concern to businesses that are facing increased global competition including from online businesses that are accessible by consumers 24 hours a day, seven days a week, and manufacturing in overseas countries with significantly lower cost bases.

"If a business is trading 7 days a week there should be no penalty for weekends as they are part of the "normal" weekly trade hours."

– Wide Bay Business Operator in the Retail Trade industry

Additional considerations

Additional issues raised by Queensland businesses in relation to the operation of penalty rates in modern awards include:

- *Maximum averaging periods:* Employees should be able to work more than 38 hours per week for normal pay if both the employer and employee agree. Businesses are also supportive of increasing the maximum averaging period from 26 weeks to 52 weeks to take into consideration seasonal and peak periods, particularly within small and medium enterprises.
- *Restricted scope of individual flexibility arrangements:* Flexibility terms within modern awards will only allow Individual Flexibility Arrangements (IFAs) to vary arrangements for when work is performed (such as working hours), overtime rates, penalty rates, allowances and leave loading. Increased scope is required to allow employers and employees to implement the flexibility arrangements that meet their needs. Further, IFAs are not flexible in operation: they cannot currently be offered as a condition of employment and may be unilaterally terminated by employees on four weeks' notice. This is undoubtedly behind the extremely low uptake of IFAs by employers across the country.
- *Increased labour costs:* In addition to penalty rates, increased casual loadings and allowances, and increased basic wage rates for particular classifications have increased employment costs with no correlating productivity improvements.

"The current labour laws disadvantage us to the point where there is hardly any point trying to continue. As a builder of patios - small custom designed projects in client homes, sales are by contract where labour costs have to be estimated months before work commences. Overtime, wages and allowances can't be accurately estimated at the time of sale. Site work needs to be carried out in small teams. Contractors can't work continuously for us. The system is an impossible mess."

– Brisbane Business Operator in the Construction industry

Actions supported moving forward

CCIQ supports maintaining a guaranteed safety net of fair and relevant minimum terms and conditions of employment. However, whilst maintaining this guarantee, there is ample room for the Federal Government to address the many concerns of Queensland businesses and other stakeholders regarding the inflexibility of modern awards.

Making the sensible changes recommended in the Bill would constitute an acknowledgement of the difficulties that confront the broad range of industries that are under significant economic stress.

“To get real productivity gains we need flexible working hours without the constraint of Monday to Friday mentality.”

– South West Queensland Business Operator in the Construction industry

In addition to the amendments contained in the Bill, we make the following recommendations for amendments to the FW Act:

- Further modernise and consolidate modern awards to ensure they contain fair and relevant minimum terms and conditions of employment that reflect the specific circumstances and operating environment within those industries to which they relate;
- Increase the scope in the current system to allow for greater flexibility with respect to the operation of penalty rates for all small and medium-sized businesses;
- Allow IFAs to be offered as a condition of employment for a set term, with termination only upon mutual agreement; and
- extend the maximum averaging period for weekly hours to 52 weeks for seasonally affected businesses and regions.

If Australia’s economy is to be recognised as a vibrant and modern one that enables businesses to compete in an increasingly global environment and meet consumer needs and expectations, we must remove those regulations that stifle their capacity to do so. Accordingly, the issue of penalty rates must be addressed.

Yours sincerely,

Nick Behrens
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