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Hon Bill Johnston MLA
Minister for Mines and Petroleum; Commerce and Industrial Relations;
Electoral Affairs; Asian Engagement

Our Ref: 71-02361

Mr Stephen Palethorpe
Secretary
Senate Education and Employment References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600



Dear Mr Palethorpe

INQUIRY INTO PENALTY RATES

Thank you for your letter of 19 June 2017, inviting the Western Australian Government to make a submission to the Committee inquiry currently being conducted into penalty rates.

The Western Australian Government welcomes the opportunity to make a submission to the inquiry on this significant issue.

The attached submission addresses the impact that reducing penalty rates can have on workers, the community and the broader economy.

The Western Australian Government looks forward to hearing of the Committee's findings in due course.

Yours sincerely

Hon Bill Johnston MLA
Minister for Mines and Petroleum; Commerce and Industrial Relations;
Electoral Affairs; Asian Engagement

Att.

18 JUL 2017

Western Australian Government submission to the Senate inquiry into penalty rates

Introduction

1. The Western Australian Government welcomes the opportunity to make a submission to the inquiry into penalty rates being conducted by the Senate Education and Employment References Committee (the Committee).
2. This submission focusses on the impact of the Fair Work Commission (FWC) decision in the recent “penalty rates case”, which reduced Sunday and public holiday penalties for workers in the retail and hospitality sectors.
3. The McGowan Labor Government strenuously opposes reductions in penalty rates in the retail, hospitality and fast food sectors, and urges the Committee to explore every opportunity available to protect penalty rates to ensure that workers are fairly compensated for working unsociable hours. The workers in these sectors are some of the lowest paid in the community, and play a critical role in serving the community during unsociable hours.
4. It is our submission that reducing the wages of hundreds of thousands of workers is not a sustainable way to grow the Australian economy, and is likely to have negative consequences in the current environment.

Rationale for cutting penalty rates

5. In its decision in the recent penalty rates case, the FWC made the following observation:¹

“Many of these employees earn just enough to cover weekly living expenses, saving money is difficult and unexpected expenses produce considerable financial distress. We are conscious of the adverse impact the award variations we propose to make upon these employees. The immediate implementation of all the variations we propose would inevitably cause some hardship to the employees affected, particularly those who work on Sundays.”

6. The McGowan Government concurs that many of the employees working under retail and hospitality awards are low paid, earn just enough to cover their weekly expenses, and are particularly vulnerable to financial distress. This being the case, it appears illogical to reduce penalty rates when it is known that it will inevitably cause hardship to the affected employees.

¹ Fair Work Commission (2017), Penalty Rates Decision, at [85].

7. It should also be noted there is considerable uncertainty as to whether reducing penalty rates will in fact result in any increase in employment. Of interest is the observation from the FWC that "...the employer lay evidence before us suggests that past penalty rates adjustments (up or down) have not had significant employment effects."²
8. Also of relevance is evidence of the experience of the hospitality industry in South Australia, where casual weekday loadings fell as a result of the award modernisation process, yet there was no additional weekday employment of workers in any of the businesses surveyed.³
9. As various parties to the penalty rates case have noted in submissions, the penalty rates decision will affect hundreds of thousands of workers. This figure will be even greater if there are further pushes to extend the penalty rates reductions to other awards. As is discussed in the following section, this would be detrimental both to the affected employees and to the broader economy.

Impact of reducing penalty rates

Impact on the low paid

10. It is widely acknowledged that hospitality and retail workers are some of the lowest paid in Australia. Workers in these sectors that regularly receive penalty rates rely on them to make ends meet financially.
11. Students, low income families and single parents will be the worst affected by any reduction in penalty rates. Many of these workers are already struggling to find a stable income, pay for childcare, and still find the money to buy groceries and cover the cost of bills.
12. The reductions in Sunday penalty rates being phased in as part of the penalty rate decision are significant, particularly in the retail awards. For instance, using the current rates of pay in the *General Retail Industry Award 2010* as an example, the difference between a full time or part time Level 1 adult employee receiving a 100 per cent loading for working on Sunday, as opposed to a 50 per cent loading, is more than \$10 per hour, or more than \$80 for an eight hour shift.⁴ Such a loss amounts to more than \$4,000 over the course of the year - a substantial amount of money for a low paid employee.
13. The decision to phase-in the reductions in penalty rates over several years does not alleviate the negative impact the decision will ultimately have on low income workers.

² Fair Work Commission (2017), Penalty Rates Decision, at [680].

³ Ibid., at [775].

⁴ As part of the transitional arrangements for the Penalty Rates Decision, the penalty rate for working on a Sunday under the award is being reduced from 100 per cent to 50 per cent between 2017 and 2020.

14. In the penalty rates decision the FWC commented:

"A substantial proportion of award-reliant employees covered by these modern awards are low paid and the reductions in Sunday penalty rates we have determined are likely to reduce the earnings of those employees who currently work on Sundays. As observed in the Productivity Commission Inquiry Report: Workplace Relations Framework (PC Final Report), in general, most existing employees would probably face reduced earnings as it is improbable that, as a group, existing workers' hours on Sundays would rise sufficiently to offset the income effects of penalty rate reductions."⁵

15. The above comments suggest that reductions to penalty rates not only require existing employees to work longer hours to make up the loss of pay, but that any additional hours such employees work will generally be insufficient to fully compensate for the lost earnings. In the case of full time employees it is often not possible to work additional hours, given they would generally need to be paid at overtime rates.
16. A recent analysis of Census data by the Grattan Institute confirms that many Australian households are experiencing mortgage stress. The data reveals that four out of the 20 suburban areas with the highest levels of mortgage stress in the nation are in Western Australia.⁶
17. The areas experiencing the greatest levels of mortgage stress in Western Australia are outer-suburban suburbs on the fringes of Perth, where people's incomes are generally lower and many award-reliant workers are located. Reducing penalty rates is likely to exacerbate the problem of mortgage stress for workers in these areas.

Economic impact

18. The increased disposable incomes created by paying penalty rates for working weekends and public holidays is a long term benefit to business because it drives demand and incentivises productive work.
19. In recent months there has been extensive discussion about the problems of low wages growth in Australia. Of particular note, the Reserve Bank of Australia (RBA) has made a number of references to the detrimental impact that low or stagnant wages growth has on household spending, economic growth and personal income tax receipts.
20. Australia is currently experiencing a prolonged period of stagnant wages growth, which is hampering economic growth and curtailing government revenue. Reducing the penalty rates (and therefore wages) of low paid workers further exacerbates this problem, creating downward pressure on wages.

⁵ Fair Work Commission (2017), Penalty Rates Decision, at [84].

⁶ Australian Financial Review, "*Mortgage Stress Easing in the City*", 10 July 2017, page 3.

21. The Western Australian economy, in particular, is currently experiencing difficult economic times, as evidenced by recent stagnant wages growth.⁷ The State will rely on the hard work of hospitality and retail workers to build the economy that will preserve their future prosperity.
22. Reducing employee wages harms the Western Australian economy at a time when it can least afford it. Hospitality and retail workers are also consumers - the money they earn in penalty rates will be spent on goods and services in Western Australia. The wages of this group are a lifeline for shops, restaurants and cafes adapting to the changing economy.
23. To remove this disposable income from the economy would be ill advised. Western Australia is already experiencing exceptionally low growth in retail spending, which increased by just 0.4 per cent in annual average terms in the year to May 2017 - well below the Australian figure of 3.1 per cent.⁸
24. A reduction in penalty rates (and therefore earnings) is likely to have a negative impact on household spending, magnifying the problem in Western Australia at the worst possible time.
25. In short, now is not the time to be cutting award rates of pay for Australia's lowest paid workers.

Impact on agreement making

26. While many award-reliant employees working for small businesses will be directly affected by the penalty rates decision, the effect is likely to be much broader over time, as it will undoubtedly impact on larger businesses with enterprise agreements in the federal industrial relations jurisdiction.
27. Regardless of the quantum of penalty rates contained in agreements, a reduced safety net of award wages will inevitably place employees in a weaker bargaining position, as it reduces the incentive for employers to bargain.
28. Some agreements replicate the penalty rates contained in underpinning awards, and if award penalty rates are reduced, there is likely to be pressure from employers to similarly reduce the penalties in enterprise agreements.
29. In other agreements, higher base rates of pay have been negotiated in exchange for lower penalty rates. If the penalty rates in the underpinning awards are reduced, employers may seek to re-negotiate lower base rates of pay in agreements to take advantage of the reduced cost structure in the award.

⁷ In the year to November 2016, Average Weekly Total Earnings in Western Australia rose from \$1326.80 per week to \$1,327.60 per week in seasonally adjusted terms, or 0.06 per cent.

⁸ Australian Bureau of Statistics (ABS), *Retail Trade, Australia, May 2017*, Cat. 8501.0.

30. Reducing award penalty rates therefore creates the risk that employers may seek to terminate agreements that have passed their nominal expiry date, if not to withdraw from bargaining altogether. In turn, this could potentially undermine many of the productivity and efficiency gains that have been negotiated over the years as part of the agreement making process.

Conclusion

31. Penalty rates are a fair reward for working when the rest of the country is enjoying their rest or recreation. People who give up time with family and friends on public holidays, weekends and evenings should receive appropriate compensation.
32. This inquiry presents a valuable opportunity for the Committee to reinforce the importance of protecting penalty rates. The Western Australian Government trusts the Committee will consider the significant impact that a reduction in penalty rates can have on the livelihoods of low paid workers and the broader economy.