



Restaurant
& Catering

**FAIR WORK AMENDMENT (SMALL BUSINESS
PENALTY RATES EXEMPTION) BILL 2012**

**SUBMISSION TO SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT & WORKPLACE RELATIONS**

OCTOBER 2012

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Restaurant & Catering Australia

- 1) Restaurant & Catering Australia is the only peak organisation representing the interests of the 40,000 restaurants, cafes and catering businesses in Australia.
- 2) The Association has a combined membership of approximately 7,000 in the calendar year 2011.

About the Industry

- 3) The industry turns over some \$16 Billion per annum and is looking down the barrel of 3+% employment growth in the next twelve months. This growth is on top of a sizeable attrition from the industry due to the large number of casual employees engaged.
- 4) Approximately 63% of the industry earns an average 2% after tax and the overall average is only 4%. It is expected profits will further deteriorate in the short term. The restaurant sector is 58% of the hospitality industry and some 62% of employment in the industry. The average employment per business is 8 employees.

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

- 5) According to the Explanatory Memorandum of the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 introduced into Parliament as a Private Members Bill by Senator Nick Xenophon will:

“The purpose of this bill is to seek a compromise between small business operators and their employees in relation to penalty rates.

The original intention of penalty rates was to compensate employees for hours worked outside the standard Monday to Friday working week. This concept is now largely outdated: thanks to improvements in technology, the development of a global economy and the deregulation of trading hours, many businesses trade over all seven days. As such, many part time or casual employees consider weekends to be part of their regular hours.

Generally, the Fair Work Act and modern awards do not recognise this shift towards a seven day week. The intention of this bill is to allow small businesses in the hospitality and retail sector, defined as those businesses with fewer than 20 full time and full time

equivalent employees, to remain true to the original intention of penalty rates while avoiding the high cost burden during specific days of the week.

To achieve this, the bill states that for small business in those industries, penalty rates do not apply unless an employee has worked for more than ten hours in a day, or more than 38 hours over a seven day period.”

- 6) Restaurant & Catering Australia support the intent of the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 and provide this submission on behalf of members to amplify the need for this type of legislative exemption for the industry.

- 7) Restaurant & Catering Australia notes that a significant number of individual employee submissions have been lodged by employees working in industries other than those covered by the Bill. Therefore, Restaurant & Catering Australia argues that those submissions by individual employees not working in the retail or restaurant & catering sectors should not be given any weight of consideration by the Senate Committee.

- 8) Restaurant & Catering Australia has produced an analysis of submissions uploaded to the Senate Committee website attached as Annexure 1. We shall update this analysis and forward to the Senate Committee once all submissions are uploaded. At the time of lodging this submission 90% of individual employee submissions lodged were outside the scope of the exemption industries. The Senate Committee should see through this attempt by the trade union movement to distort the objections from employees that will not be affected by this Bill.

- 9) The Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 is very clear in the proposed exemption detailed in s.155A (2) which states:

“An employer is an ***excluded small business employer*** at a particular time if, at that time, the employer employs fewer than 20 employees in:

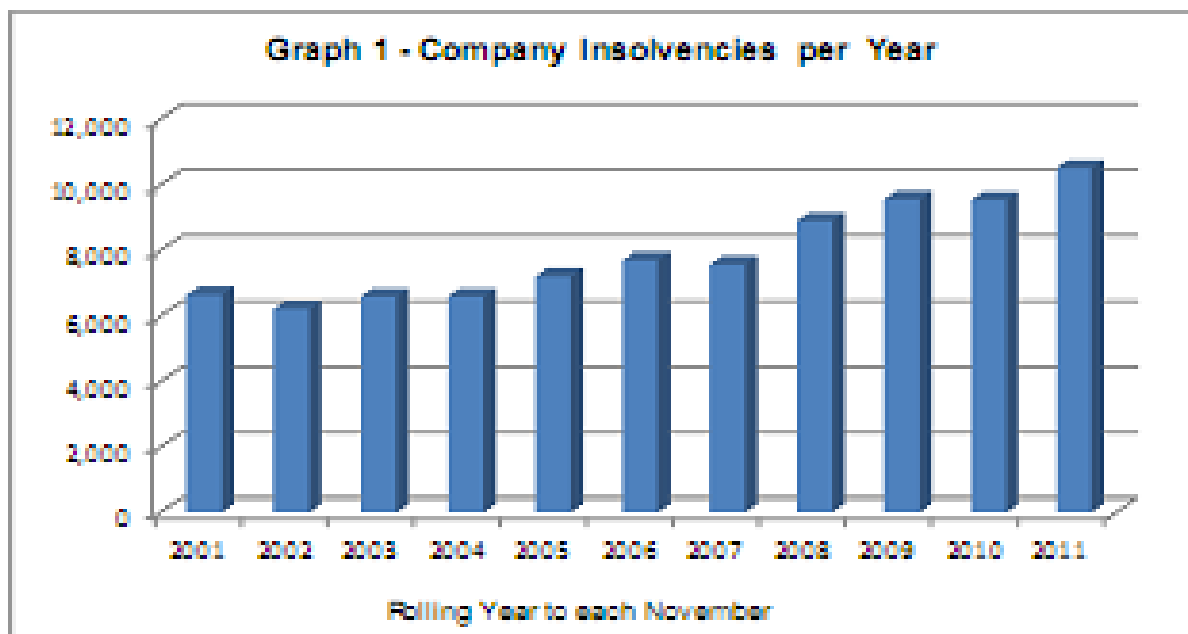
(a) the restaurant and catering industry; or

(b) the retail industry.”

- 10) To avoid doubt in order to ensure which Modern Awards are included in the exemption it may be necessary to list the relevant cohort of Modern Awards that apply to the retail and restaurant and catering industries.

Economic Indicators

- 11) In underlying terms, inflation is around 2½ per cent. Over the coming one to two years, and abstracting from the effects of the carbon price, the (Reserve) Bank expects inflation to be in the 2–3 per cent range. This forecast embodies an expectation that productivity growth will improve somewhat as a result of the structural change occurring in the economy.¹
- 12) There were 2,132,412 actively trading businesses in Australia as at June 2011².
- 13) 2011 was the worst year on record for corporate insolvencies³. Although the high rate of insolvencies can be attributed to a number of market forces, excessive labour costs are included in the contributing factors for many businesses.



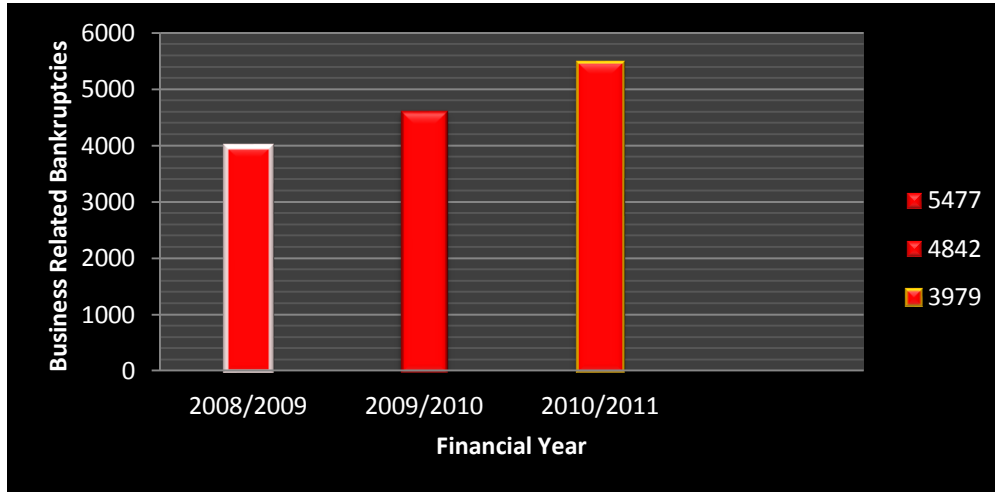
Source: Dissolve - The Business Stress Report: January 2012

¹ Statement by Glenn Stevens, Governor: Monetary Policy Decision Reserve Bank Of Australia 6 March 2012

² ABS Counts of Australian Businesses Including Entries and Exits June 2007 – June 2011 Catalogue No. 8165

³ Sanderson C - The Business Stress Report – Dissolve January 2012

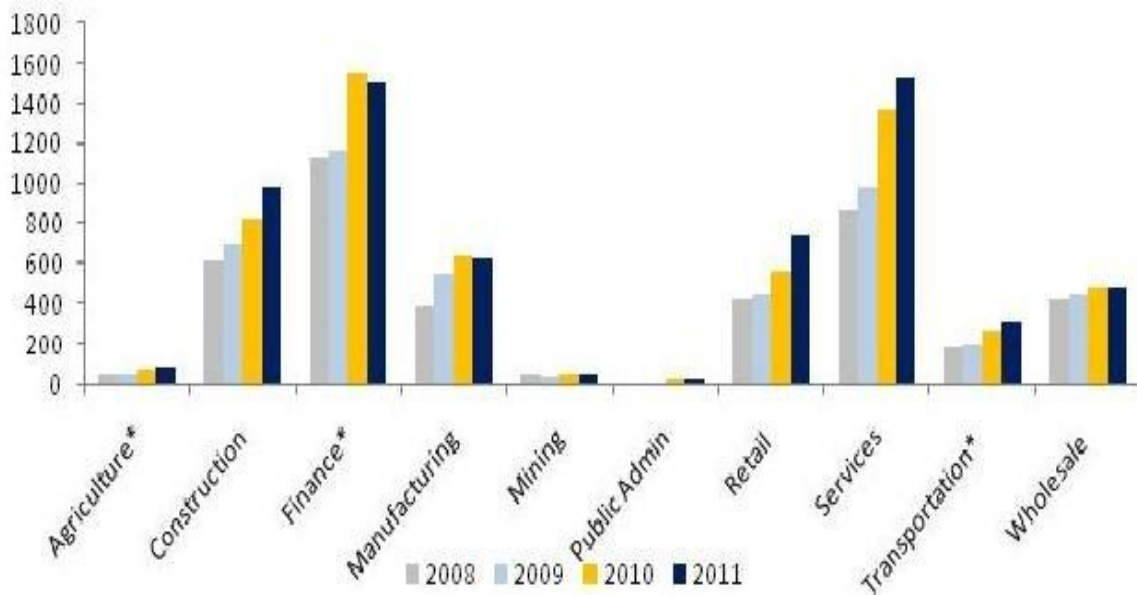
14) The table below highlights business related bankruptcies has increased by 37% compared to the financial year immediately before the introduction of the Fair Work Act on 1 July 2009.



Source: Business Related Bankruptcies under the Bankruptcy Act 1966 – Insolvency and Trustee Service Australia Annual Report 2010/11 www.itsa.gov.au

15) Dun and Bradstreet analysis of business start ups and failures for the December quarter found that there was a 48% increase in small businesses going bankrupt over the last twelve months while small business start ups fell by 95%.

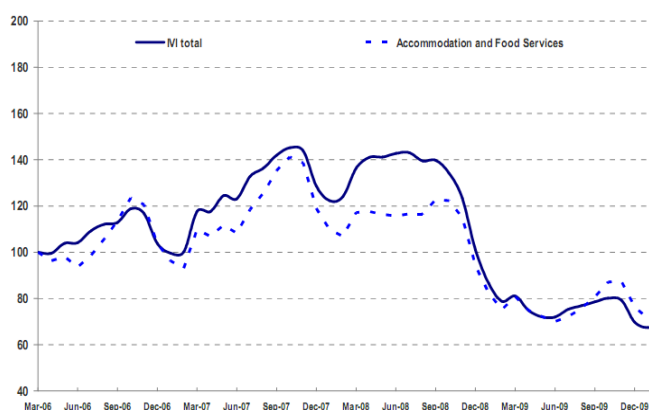
16) The following table illustrates that the services sector was the hardest hit during 2011 for business failures.



Source: Dun & Bradstreet Business Failures and Start Ups Analysis December Quarter 2011

- 17) Survival rates for businesses operating in this sector remain the lowest of all private sector types. Of the 13,968 new businesses that entered the sector in 2007/08 only 6,813 (48.8%) survived to June 2011⁴.
- 18) Labour costs represent some 45% of total expenditure for restaurant and catering businesses and significant spikes in labour costs introduced by the Fair Work Act Modern Award regime must be included in the factors that result in high business failure rates⁵.
- 19) Research conducted by Fair Work Australia indicates that relative to small businesses that utilised non-award arrangements and a combination of award and non-award arrangements, small award-reliant only businesses were less likely to exhibit increased productivity and profitability in the period of analysis.⁶
- 20) The Department of Education Employment and Workplace Relations research show Vacancies for Accommodation and Food Services show a similar trend to total industries (see Figure 7). Following a slight increase in September 2008, vacancies fell sharply, recovering in September 2009 before decreasing again. Over the year to February 2010, Accommodation and Food Services vacancies decreased by 5.6 per cent (less than the all industries average of 11.3 per cent).⁷

Figure 7: Internet Vacancy Index (IVI) – All Industries and Accommodation, and Food Services – March 2006 to February 2010 (March 2006 = 100)



Source: DEEWR Industry Internet Vacancy Index (three month moving average)⁸

⁴ ABS Counts of Australian Businesses Including Entries and Exits June 2007 – June 2011 Catalogue No. 8165

⁵ Restaurant & Catering Australia Industry Benchmarking Survey 2011/12

⁶ Research Report 1/2012 Award Reliant small businesses - Fair Work Australia - January 2012

⁷ Employment Outlook for Accommodation and Food Services- Department of Education, Employment and Workplace Relations – Skills Info Page 9

21) Restaurant & Catering Australia estimates that more recently for the calendar year 2011 some 509 356 shifts have been lost or 2,945 jobs lost to the industry as a result of increased labour costs.

Industry Survey

22) Restaurant & Catering Australia conducted a survey of its members in late 2011 as the fourth edition of a similar survey completed in 2001, 2005 and 2010. The survey retains a consistent objective that being to obtain detailed information about the state of the industry in respect to its financial, business and human resource elements.

23) The following extracts from the Industry benchmarking Survey reveal the key factors in business operations:

4.3 Impact of a further minimum Wage increase on 01 July 2012

Respondents were asked to indicate what impact would a further Award minimum wage increases from 01 July 2012 mean for their business profitability. 65.8% indicated a minimum wage increase from July 2012 would have significant financial impact on the business profitability. 31.2% of respondents indicated there would be a moderate impact, whilst 3% of respondents answering this question indicated there would be no financial impact.

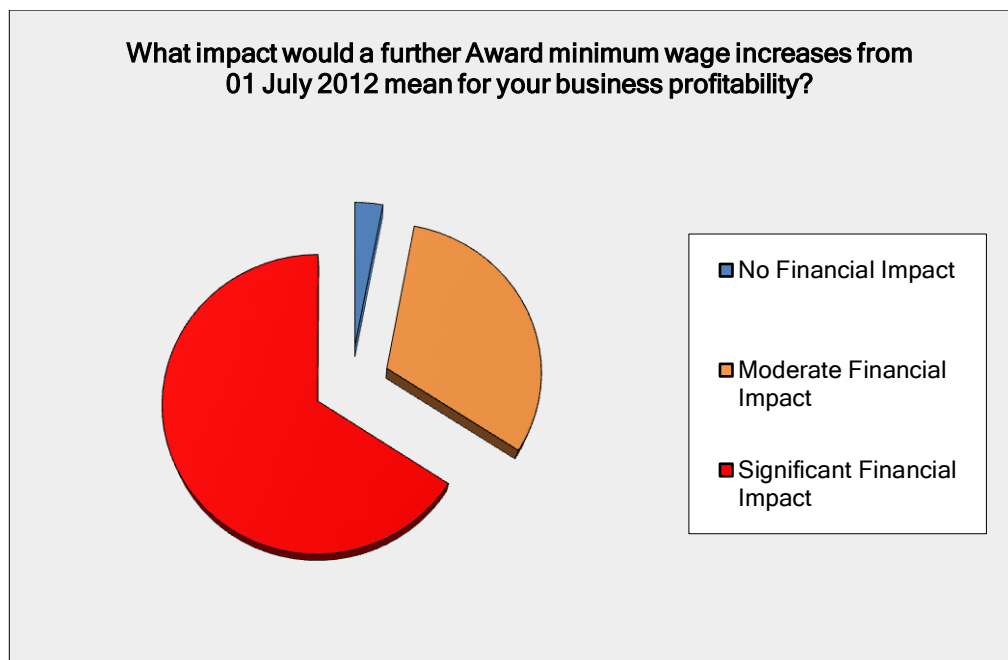


Fig 4.3 - Impact of a further Award minimum wage increase for business profitability in 2012

4.4 Further wage increases impact businesses employing more staff over the next 12 months

32% of the respondents who answered the question on whether a wage increase impact businesses employing more staff over the next 12 months, indicated they would employ less staff. 28.6% indicated they would employ the same staff at a higher cost, whilst 20.3% would employ the same amount of staff but these staff would work less hours, therefore 19 indicate the manager/owners would work more hours themselves if there is a further wage increase in July 2012.

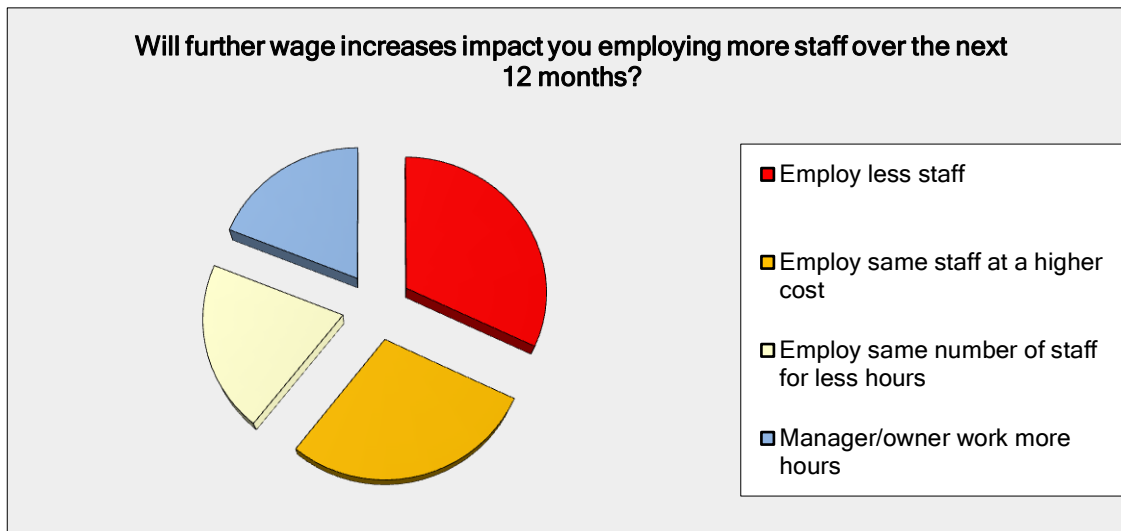


Fig 4.4 - Impact of a further Award minimum wage increase impact employing more staff in 2012

4.5 Will business reduce staff if labour costs rise in 2012/2013

70.9% of the respondents indicated business will reduce the number of staff if labour costs rise in the next 12 months. 29.1 of the respondents indicated business will not reduce the staff if labour costs rise during this period.

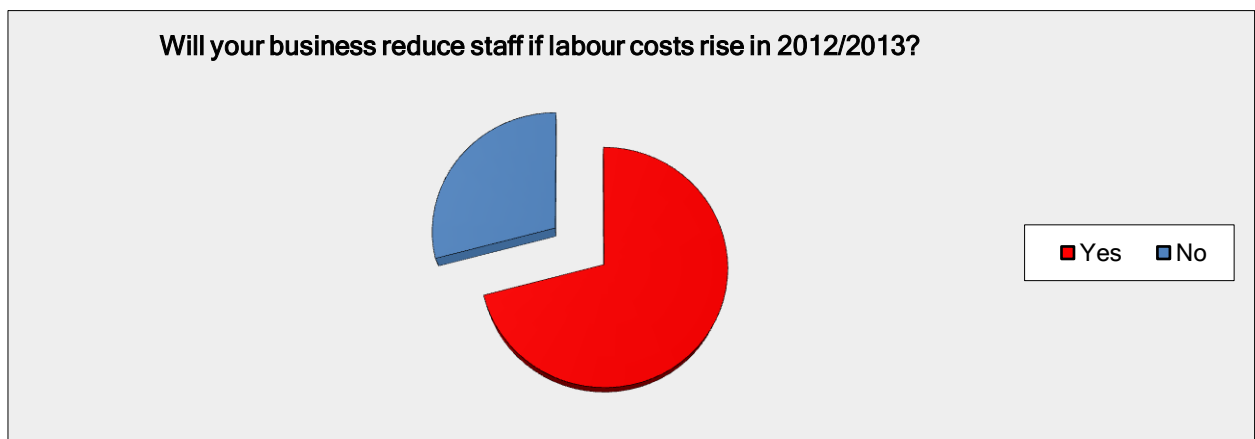


Fig 4.5 – Will business reduce staff if labour costs rise in 2012/2013

4.6 What has been the impact on weekend/public holiday penalty rates being enforced through the restaurant award?

Respondents were asked what the impact has been for business on weekends / public holidays when penalty rates are enforced through the Restaurant Award. 41.1% of respondents indicated the business owner or manager worked on weekends, 33.3% of respondents indicated they closed their business on public holidays and 18.2 of the respondents reduced their business trading hours. 3.9% indicated they closed their business on Sundays and 3.5% revealed they did not trade on the weekends.

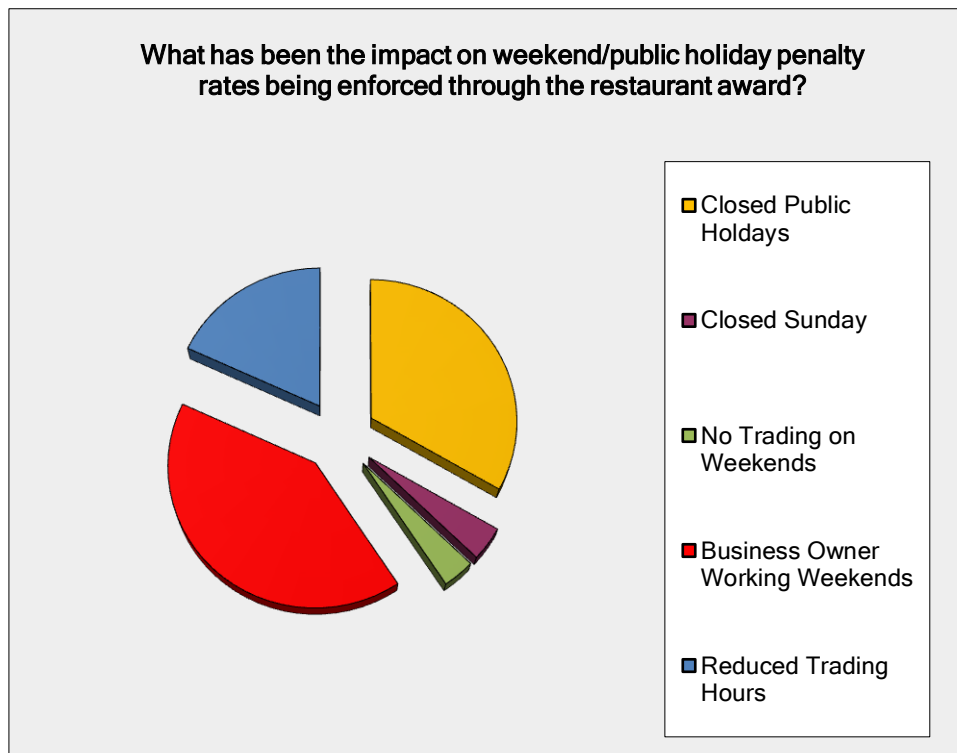


Fig 4.6 – Impact for businesses on weekend / public holiday penalty rated being enforced through the Award

Impact of Award Modernisation

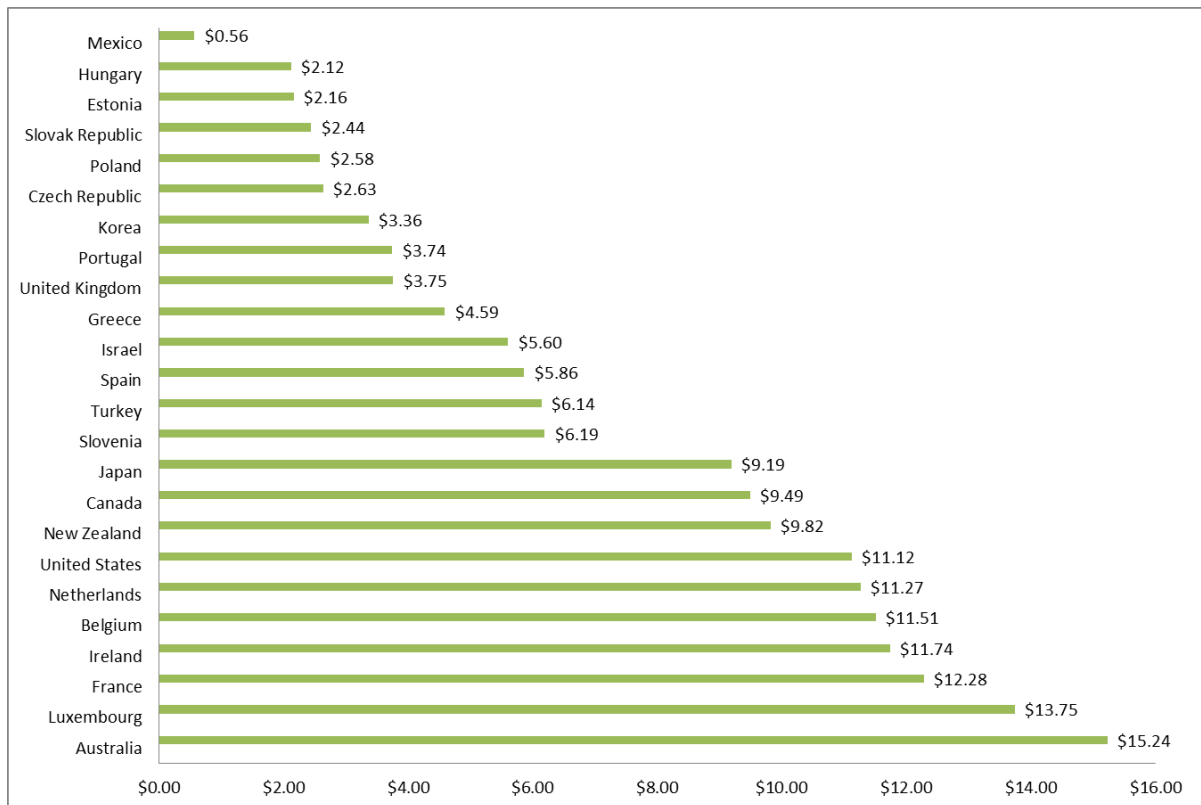
- 24) Restaurant, cafe and catering businesses have already incurred significant costs with the introduction of the Fair Work system which has resulted in some businesses applying significant labour cost increases as a result of the making of the Restaurant Industry Award 2010 and the Hospitality Industry (General) Award 2010 which took effect in part from 1 January 2010.
- 25) Businesses have incurred additional costs in the transitional arrangements and are further concerned about significant monetary increases applied by way of new penalty rates that in some cases did not apply under the pre modern award system. For example, casual employees were not entitled to weekend penalty rates under the Hospitality Industry – Restaurant, Catering and Allied Establishments Award – South Eastern Division. This has resulted in penalty rates being phased in on top of the existing casual loading making weekend trading unviable for many businesses in South East Queensland.
- 26) The significant increases in wages has hit the bottom line of small and medium size businesses to the extent that some businesses will consider reducing staff or trading hours to mitigate the impact against profit margins. This is evident from the responses to our industry survey questionnaires.
- 27) Some transitional rates such applicable under the Modern Restaurant Industry Award include a Casual Food and Beverage Attendant Grade 2 previously employed under the Liquor and Allied Industries Catering, Café, Restaurants etc (ACT) Award 1998 are now paid a minimum rate of \$30.68 per hour for working on Sundays and this rate jumps to \$45.04 per hour on public holidays. It should be noted that the duties of a Food and Beverage Attendant Grade 2 include the preparation of simple food items such as sandwiches, general waiting duties and seating guests.
- 28) Many small businesses in this sector no longer trade on weekends and public holidays because of the high cost of penalty rates. The attached included in Annexure 2 *“Café Owner pays penalty as staff enjoy higher rates”*⁸ is indicative of the feedback Restaurant & Catering Australia receives from its members in all states and territories highlighting that transitional rates are impacting commercial viability.

⁸ The Australian 3 March 2011

29) Transitional wage rates of over \$50.00 per hour excessively exceed the international rates of pay paid to hospitality employees in overseas markets.

30) The table below highlights that Australia now has the highest minimum wages in the world.

Minimum Wage Comparison (\$US Currency) OECD Countries 2011⁹



31) High minimum wages combined with penalty rates and other multipliers under Modern Awards are major contributors to the decline in commercial viability and reduction in trading hours.

⁹ Source: Online OECD Employment Data Base as at 9 October 2012

Tourism

- 32) The real penalty to domestic tourism is that the high Australian dollar combined with excessive labour cost increases when passed on to consumers results in more Australians choosing to travel overseas for cheaper vacations where food and beverage is significantly less compared to Australia.
- 33) Of significant concern to the industry is the growing move away from international benchmarks and fear that many entrepreneurs will set up businesses overseas where labour costs are not as excessive as they are in Australia.
- 34) Eating out at cafes and restaurants is one of the most popular activities undertaken by visitors to Australia and is an important contributor to visitor spend considering it represented 15.1% of total tourism spend in 2010/11.¹⁰

- 35) The Visitor Economy Taskforce in its final report to the New South Wales Government made the following recommendation as part of its strategic plan to improve tourism within the state:

“Call upon the Commonwealth Government to review the *Fair Work Act 2009*, to remove those provisions which significantly increase labour costs and deter businesses in the visitor economy from operating at times/days of the week when tourism and hospitality sector faces peak demand.”¹¹

- 36) Further the Visitor Economy Taskforce went further in recommending the following action:

“Call upon the Commonwealth Government to review the *Fair Work Act 2009*, including to require an employee to work five days during the week before being entitled to receive penalty rate wages for any subsequent shifts during the weekend.”¹²

¹⁰ ABS Tourism Satellite Account Australian National Accounts 5249.0 2010/11 Pg 7

¹¹ Final Report of the Visitor Economy Taskforce – A plan to double overnight visitor expenditure to NSW by 2020 Department of Trade and Investment, Regional Infrastructure and Services NSW Government - June 2012

¹² Ibid

37) In Queensland the industry and the Queensland Government have agreed to a twelve month action plan to 'get Queensland's tourism industry back on track'. In the first group of priorities for action the plan requires the signatories to 'start lobbying the Federal Government to address the penalty rates issue for the industry through industrial relations reform'. The report records that 'The major issues affecting tourism operators were flexibility and productivity'.

Human Rights for Business Owners

38) Restaurant & Catering Australia reminds the Senate Committee that business owners are human and consideration should be given to the human rights of business owners forced to work excessive long hours because of regulatory changes to business operations that were not foreseen when they started the business.

39) Zachary Angelidis runs the Castle Coffee Bean Café in Castle Hill New South Wales. He has been forced to run the Café himself seven days a week and sack his staff. He reported to the Sunday Telegraph that "I am in survival mode, barely existing. After costs I probably get \$200 a week."

40) Mr Angelidis is not alone and many small business members of Restaurant & Catering Australia have reported issues in being locked into leases with major Shopping Complex operators that require seven day week trading. This means that the Shopping Complex would terminate the lease if the business closed on a Saturday or Sunday because it would be considered to have breached the terms of the lease. This is oppressive and causing many businesses into voluntary administration.

41) Restaurant & Catering Australia also draws the Senate Committee's attention to the Objectives of the Fair Work Act 2009 which is said to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by....

s.3 (g) acknowledging the special circumstances of small and medium-sized enterprises.

42) Restaurant & Catering Australia argues the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 will promote the objectives of the Fair Work Act 2009 by expressly acknowledging the special circumstances of small and medium-sized enterprises and there need to be treated differently.

43) The Productivity Commission in its enquiry into the retail industry noted in its final report and recommendations that:

“High minimum award wages are also said to be constraining the ability of employers to restructure employee remuneration in ways that could enhance productivity, for example, through greater use of performance-related commission or incentive payments.”¹³

44) Restaurant & Catering Australia agrees with the Productivity Commission recommendation and the flexibility in being able to restructure labour costs as proposed in the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 will meet the challenge in improving productivity in these workplaces.

45) It is incumbent on the Senate Committee to investigate the human rights impact to business owners when Government regulation of employment practices places preference over the rights of employees at the expense of business owners.

46) Restaurant & Catering Australia argue that the Fair Work Act 2009 has fundamentally swung the pendulum in favour of employees and trade unions to the extent that running a small business in Australia is oppressive, unjust and unfair to the community of entrepreneurs that should be rewarded not punished by Government.

Conclusion

47) Restaurant & Catering Australia strongly supports the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 and encourage the Senate Committee to find in favour of the Bill in order to mitigate business failure, job losses and economic uncertainty for the industry.

¹³ Productivity Commission 2011, *Economic Structure and Performance of the Australian Retail Industry*, Report no. 56, Canberra. Chapter 11

ANNEXURE 1

Submissions for Senate Enquiry

Submission Number	Name	Involved in the Restaurant Catering or Retail Industries	Role
1	Heather Smith	✗	Not stated
2	Name Withheld	✗	Not stated
3	Pauline Morrison	✗	Not stated
4	Name Withheld	✗	Not stated
5	Mr Graeme Frappell	✗	Shift Worker
6	Name Withheld	✗	Senior Manager
7	Ms Marissa Ilsley	✗	Not stated
8	Mr Scott O'Keeffe	✗	Not stated
9	Ms Elspeth Gardner	✗	Subscription manager
10	Ms Michelle Fidock	✗	Support Officer
11	Mr Dowon Cho	✗	Computer Technician
12	Derek Page	✗	Not stated
13	Mr Roy Scaife	✗	Research Officer
14	Ms Margaret Channon	✗	Cleaner
15	Mr Grahame Saunders	✗	Training Advisor
16	Ms Jennifer Arrow	✗	Librarian
17	Mr Philip Lewis	✗	General Assistant
18	Ms Sarah Thomas	✓	Sales Assistant
19	Lindsay Thomson	✗	Not stated
20	Mr Michael Conway	✗	Ticketing Supervisor
21	Micheal Reid	✗	Delivery Officer
22	Mr Richard Lourensz	✗	Not stated
23	Mr Goeffrey Kearney	✗	Wine Maker
24	Ms Suzanne Mammone	✗	Teacher
25	Mr Rory Chapple	✗	Project Manager
26	Mr Graham Barr	✗	Project Manager
27	Mr Rolando Blandon	✗	Accountant
28	Mr Doug McFarland	✗	Load Controller
29	Ms Lisa Anderson	✗	Not stated
30	Mr Paul Lieu	✗	Analyst
31	Ms Diana Sully	✗	Business Development Manager
32	Ms Ann Brita Nilsson	✓	Sales Assistant
33	Mr Simon Gray	✗	Librarian
34	Mr James Watt	✗	Not stated
35	Ms Karen Sheridan	✗	Nurses Union Organiser
36	Mr Bernard Butler	✗	Not stated
37	Mr Jonathan Vincent	✗	Not stated

38	Mr Mark Cohen	✗	Correctional Officer
39	Ms Stephanie Mathieson	✗	Animal Management
40	Mr Scott Drennan	✗	Not stated
41	Ms Justine Fischer	✓	Waitress
42		✗	
43	Ms Rosalind Haining	✗	Not stated
44	Mr John Groppi	✗	Not stated
45	Ms Sharon O'Grady	✗	Nurses
46	Ms Margaret Fooks	✗	Child Protection Worker
47	Mr Nigel Robertson	✗	IT analyst
48	Mr Evin Donohoe	✗	Student Services Officer
49	Ms Suzanne Russell	✗	Manager
50	Ms Jennifer Reed	✗	Library Clerk
51	Mr Bernie Hynes	✗	Fitter
52	Mr James McAllister	✗	Part-Time musician
53	Mr Rodney Jones	✗	Not stated
54	Lesley Douglass	✗	Nurse Manager
55	Mr Webster Kyle	✗	Taxi driver
56	Mr Andrew Olsson	✗	Seafarer
57	Mr Rob Pattison	✗	Tutor
58	Mr Scott Carriage	✗	Postal Delivery Officer
59	Mr Duncan Fairbairn	✗	Customs Officer
60	Ms Claire Firman	✗	Security Officer
61	Mr David Dean	✗	Not stated
62	Ms Gloria Van Mosseveld	✗	School Administrative Manager
63	Ms Kay Hughes	✗	Works in School
64	Mr Alan Smith	✓	Barista
65	Ms Sarah Rantall	✗	Lab Technician
66	Mr Brian Love	✗	Docker
67	Leigh Rainbird	✗	N/A
68	Mr Wayne Mawbey	✓	Owner/Operator
69	Working Women's Centre SA Inc		Association
70	Pay Justice Action		Association
71	Shop, Distributive and Allied Employees' Association		Association
72	Shannon Bennett	✓	Owner/Operator
73	Australian Newsagents' Federation Ltd		Association
74	Association of Professional Engineers, Scientists and Managers Australia		Association

75	Australian Retailers Association		Association
76	Ms Tracy Jones	✗	Postal Service Officer
77	Mr Gary Price	✗	Postal Worker
78	Ms Paula Hanson	✗	Not stated
79	Ms Helen Gollan	✗	Admin
80	Ms Virginia Mansel Lees	✗	Academic
81	Mr Mark Marcus	✗	Postal Worker
82	Mr David Tannahill	✗	Not stated
83	Mr Anthony Oldfield	✗	Mill Worker
84	Ms Heather Wallace	✗	Assistant Policy Officer
85	Mr Steve Kennewell	✗	Rigger
86	Mr James Gyngell	✓	Night Fill
87	Mr Daniel Stone	✗	Not stated
88	Mr Peter Enge	✗	Not stated
89	Ms Audra Davies	✗	Juvenile Justice Officer
90	Mr Karl Crisafulli	✗	IT Analyst
91	Ms Brigid-Ann Lord	✗	Nurse
92	Ms Muriel Grieve	✗	CSA
93	Mr Peter Ridgewell	✗	Not stated
94	Mr Gary Brown	✗	Clerk
95	Ms Maria Lawson	✗	Not stated
96	Mr Paul Reiner	✗	Dispatcher
97	Mr Michael Lynn	✗	Storeman
98	Ms Jennifer Levett	✗	Adminsitration
99	Mr Ewan Cox	✗	Communication Technician
100	Mr Daniel Golden	✗	Public Servant
101	Fouzia Aden	✗	PA
102	Mr Peter Shead	✗	Driver
103	Mr Trevor Shell	✗	Electrical Mechanic
104	Mr Steven Falivene	✗	Agricultural Advisor
105	Mr Robert May	✗	Not stated
106	Australian Chamber of Commerce and Industry		Association
107	Victorian Employers' Chamber of Commerce and Industry (VECCI)		Association
108	UnionsWA		Union
109	Freedom Socialist Party		Political Party
110	Name Withheld	✗	Not stated
111	Chamber of Commerce and Industry Queensland		Association
112	Australian Catholic Council for Employment Relations		Association

113	Job Watch Inc		Community Centre
114	Name Withheld		Owner/Operator
115	Small Business Development Corporation		Association
116	Australian Federation of Employers and Industries		Association
117	Ms Susan Jackson		Not stated
118	Ms Ruth Boydell		Tafe Teacher
119	Mr Phil Jones		Mental Health Worker
120	Mr Phillip Vassallo		Technician
121	Ms Sue Brown		Nurse
122	Ms Polly Walker		Project Assistant
123	Mr Peter Francis		Bookseller
124	Mr Phil Grant		Not stated
125	Kym Russell		Laboratory Assistant
126	Mr Douwe Goedhart		Technical Officer
127	Mr Anthony Mcaleer		Museum Officer
128	Ms Miriam Walter		Assistant Nurse
129	Mr Jackson Black		Library Assistant
130	Mr Michael Dowling		Not stated
131	Ms Lisa Rush		Pharmacy Assistant
132	Ms Janine Garrier		Nurse
133			
134	Mr Alistair Parr		Not stated
135	Ms Leone Clough		Librarian
136	Ms Carmen Thaller		DDSO-Q1
137	Ms Anne Goodfellow		Not stated
138	Ms Catherine Crittenden		Not stated
139	Mr Matthew Holle		Building and Facilities Officer
140	Ms Fiona Deegan		Nurse
141	Ms Julie McDonald		Residential Support Worker
142	Mr Anthony Beer		Not stated
143	Mr Carlo Arena		Customer Services Agent
144	Mr Tim Causer		Building Teacher
145	Mr Michael Schembri		Not stated
146	Gabriel Oriti		VET teacher in hospitality
147	Mr Gerard D'souza		Coordinator
148	Mr Adam Deane		Not stated
149	Mr George Piggins		Technician
150	Ms Emmy Capaan		Child Protection Caseworker
151	Mr Ian Robinson		Senior Correctional Officer
152	Mr Bob Elliston		Not stated
153	Mr Paul Black		Heat Treatment Technician

154	Mr Christopher McIntyre	✗	Stevedore
155	Mr Darren Dwyer	✗	Union Official
156	Ms Tanya Davis	✗	Stevedore
157	Mr Anthony Nardella	✗	Stevedore
158	Ms Wendy Dunn	✓	Owner/Operator
159	Mr Jim Higgins	✗	Teacher
160	Mr Mark Taylor	✗	Policy Officer
161	Mr Robert Egan	✗	Supervisor
162	Ms Kanticha Fumfuai	✓	Chef
163	Mr Kevin Keane	✗	Deckhand
164	Mr Bob Innis	✗	Reg Nurse
165	Mr Simon Hickling	✗	Engineer
166	Mr Matthew Kamer	✗	Steward
167	Mr Travis Chalkley	✗	Boilermaker
168	Ms Lynda Groom	✗	Market Research Clerk
169	Ms Georgina Kategiannis	✓	Sales Assistant
170	Mr Jason Atkinson	✗	Stevedore
171	Dieter Huber	✓	Cook/Chef
172	Mr Scott Carruthers	✗	Boilermaker
173	Mr Ryan Collins	✗	Carer
174	Ms Anna Bridle	✗	Not stated
175	Mr Shaun Mcquaid	✗	Steward
176	Mr David Mcgrath	✗	Stevedore
177	Mr David Bremner	✗	Lab Technician
178	Mr Ewdard Bacon	✓	Cook/Chef
179	Ms Paula Houghton	✗	Mail Officer
180	Mr Mathew Sproule	✗	Intergrated Rating
181	Mitra Jovanovic	✗	Residential Care Worker
182	Ms Helen Bell	✗	Security Technician
183	Andreas Gavriel	✗	Plasma Fractionation Team Leader
184	Mr Roberto Smythe	✗	Boat Skipper
185	Mr Glen Mitchell	✗	Fitter
186	Mr Alan Gilbert	✗	Firefighter
187	Mr Benjamin May	✗	Not stated
188	Mr Jason Egan	✗	Teacher
189	Mr Michael Eiberg	✗	Software Specialist
190	Mr Slobodan Angelkoski	✗	Communications Technician
191	Mr Denis Roscoe	✗	ALS Paramedic Educator
192	Mr Ray Maybury	✗	Postal Officer
193	Ms Vicki Stirling	✗	Correctional Officer
194	Mr Shane Stevens	✗	Not stated
195	Mr Martin Trama	✗	Security

196	Dzevad Ibric	✗	Manager
197	Mr Warwick Rothacker	✗	Seaman
198	Mr Anthony Zagorc	✗	Storeman
199	Mr David Collard	✗	IR
200	Mr John Fitzpatrick	✗	Not stated
201	Ewhen Kowal	✗	Stevedore
202	Mr Cameron Staples	✓	Cook/Chef
203	Mr Byron Craig	✗	Not stated
204	Mr Chris Wilkinson	✗	Processs Worker
205	Mr Joe Worboys	✗	Supervisor
206	Mr Mark Gilligan	✗	Clerk
207	Mr Doug Reckord	✗	Not stated
208	Mr Michael Agius	✗	Stevedore
209	Mr Cameron Barnes	✗	Machine Operator
210	Balraj Singh	✗	Postal Officer
211	Ms Patrice Vallet	✗	Cleaner
212	Students' Representative Council - University of Sydney		Association
213	Mr Bernard Gallen	✗	Not stated
214	Ms Julie Vojneski	✗	Carer
215	Mr Stephen Evans	✗	Fork Lift Driver
216	Ms Mary Bond	✗	Not stated
217	Mr Trevor Dean	✗	Food Process Team Leader
218	Mr Tony Lau	✗	Engineer
219	Ms Mandy Dempsey	✓	Retail Sales Assistant
220	Ms Carol Corless	✗	Quality Technician
221	Mr Brett Maddock	✗	Storeman
222	Mr Dave Packer	✗	Production Officer
223	Ms Jenna Butturini	✓	Restaurant Employee
224	Mr Andrew Sidebottom	✗	Powerline Worker
225	Mr Shane Oliver	✗	Merchant Seaman
226	Ms Melissa Buglar	✓	Waitress
227	Mr Patrick Cook	✗	Not stated
228	Mr Brenton Grocke	✗	Maintenance Planner
229	Mr Peter Howlett	✗	Machine Operator
230	Mr Bruce Hill	✗	Safety Advisor
231	ACTU		Association
232	Name Withheld	✗	Not stated
233	Mrs Sandra Bradley	✗	Teacher
234	Mr Garry Wilson	✗	Not stated
235	Mr Doug Kelly	✓	Butcher
236	Mr Daniel De Mol	✗	Labourer
237	Ms Jodi Hyde	✗	NDT Technician

238	Mr John Taylor	✗	Not stated
239	Mr Ian Rogers	✗	Operator
240	Mr Michael Woods	✗	Boilermaker
241	Mr Sean McCourt	✗	Driver
242	Mr Dave Butterworth	✗	Not stated
243	Mr Tim Mathews	✗	Owner/Operator
244	Mr Tim Frazer	✗	Fitter and Turner
245	Mr William Fenner	✗	Printer
246	Mr Graham Newell	✗	Fitter/Machinist
247	Mr Matt Bantick	✗	Boilermaker Welder
248	Mr Carl Kirwin	✗	Unemployed
249	Mr Bernard Oliver	✗	Not stated
250	Mr Richard Stephenson	✗	Warehouse Manager
251	Mr Garry Laing	✗	Fitter
252	Heiko Viefhaus	✗	Air-conditioning Mechanic
253	Mr Graham Rogers	✗	Not stated
254	Mr Adrian Cummings	✗	Tradesman
255	Mr Dave Chestnutt	✗	Printer
256	Mr Terence O'Brien	✗	Welder
257	Mr David Dixon	✗	Teacher
258	Mr Gavin Gillett	✗	Crane Driver
259	Mr Brian Cutler	✗	Processs Worker
260	Ms Sarah Brown	✓	Waitress
261	Mr Peter Cooke	✗	Bookbinder and Finisher
262	Mr Wayne Dunseath	✗	Not stated
263	Mr David Taylor	✗	Technician
264	Mr Aaron Meredith	✗	Boilermaker
265	Ms Glenys Kendal	✓	Shop Assistant
266	Mr Milan Pupavac	✗	Fitter
267	Mr Peter Anderton	✗	Maintainer
268	Mr Adam Bennett	✗	Clinical Nurse
269	Mr David Wilson	✗	Loans Manager
270	Mr Aaron Monks	✗	Production Technician
271	Matan Lavi	✗	Not stated
272	Mr Brian Hastie	✗	Control Room Operator
273	Mr Steve Lange	✗	Fitter
274	Mr Dave Stephens	✗	Seafarer
275	Ms Linda Coyle	✗	Not stated
276	Ms Pauline Olson	✗	Not stated
277	Mr Gareth Davies	✗	Not stated
278	Dayna Knowles	✓	Pizza Delivery Driver/Hospitality employee
279	Mr Karl Reed	✗	Not stated

280	Mr James Allen	✗	Cam Programmer
281	Mr Rod MacLennan	✗	Draughtsman
282	Ms Joanne Bower	✗	Not stated
283	Ian Dayman	✗	Fixed Plant Operator
284	Mr David Parsons	✗	Nurse
285	Mr Evan Winstanley	✗	Licenced Aircraft Maintenance Engineer
286	Shan Williams	✗	Health Professional
287	Ms Kristy Youd	✗	Carer
288	Mr Simon Bodfish	✗	Orderly
289	Mr Wayne Cobbing	✗	Carer
290	Ms Maree Waters	✗	Support Worker
291	Mr Jim Stirling	✗	Paramedic
292	Mr Richard Leigh	✗	Not stated
293	Ms Andrea Garwood	✓	Food Service Attendant
294	Mr Michael Booth	✗	Radiographer
295	Mr Craig Tate	✗	Support Worker
296	Alex Donnelly	✗	Disability Support Worker
297	Kym Jones	✗	Nurse/Carer
298	Mr Daniel Wright	✗	Electrician
299	Vance Painter	✗	Contract Project Manager
300	Tracey Purcell	✗	Disability Support Worker
301	Mr Daniel Cohen	✗	Teacher
302	Mr David Wellmann	✗	Scientist
303	Ms Denise Barnett	✗	Not stated
304	Mr Rick Sullivan	✗	Coach Driver
305	Mr Alan Mcconnachy	✗	Not stated
306	Mr Richard Scarff	✗	Medical Scientist
307	Ms Maria Dege	✗	Customer Service Officer
308	Ms Brenda Cawthorne	✗	Not stated
309	Mr Shane Daley	✗	Parole Officer
310	Ms Rebecca Ludwick	✗	Not stated
311	Robyn Moroney	✗	University Lecturer
312	Mr Joseph Harland	✗	Lab Manager
313	Mr Mick Fiolet	✗	Not stated
314	Alynn Pratt	✗	Theatre Technician
315	Ms Debbie Ellis	✗	Training and Recruitment Leader
316	Mr Kevin Nunn	✗	Mining
317	Ashleigh Lustica	✗	Administration Officer
318	Australian Services Union	✗	Association
319	Ms Karina Morgan	✗	Education Officer
320	Mr Stuart Grigg	✗	Public Servant

321	Mr Jos Vandersman	✗	Educational Technology Developer
322	Ms Melissa de Silva	✗	Caseworker and Policy officer
323	Ms Gillian Joiner	✗	Mental Health Worker
324	Mr Denis Millar	✗	Security Guard
325	Mr Peter Hood	✗	Not stated
326	Mr Ken Mayes	✗	Electrical Technician
327	Mr Tony Brooks	✗	Librarian
328	Mr Matthew Drake-Brockman	✗	Web Publisher
329	Daryl Sandford	✗	Electrician
330	Mr Ron Chenoweth	✗	Government Employee
331	Mr Tim Niven	✗	IT Manager
332	Ms Janene Metcalfe	✗	Not stated
333	Ms Ellen Richardson	✓	Shop Assistant
334	Ms Kirsty Burke	✓	Bar Attendent
335	Alex Donaldson	✗	IT Administrator
336	Andries Combrinck	✗	General Service Operator
337	Ms Veronica Adolphe	✗	SSA
338	Mr Andrew Olsson	✗	Seafarer
339	Mr Robert Smith	✗	Assistant Education Officer
340	Ms Lara Shanahan	✗	Clerk
341	Mr Greg Barker	✗	Storeman
342	Ms Sandra Murray	✗	Public Servant
343	Mr James Hautot	✗	Boilermaker
344	Mr Geoff Browne	✗	Policy Analyst
345	Mr Mick Bee	✗	Fitter and Turner
346	Mr Gavin Swayn	✗	Self Employed
347	Mr Scott Jennar	✗	Power Plant Operator
348	Ms Gillian Harrison	✓	Visitor Services Supervisor
349	Mr Gregory Daly	✗	Refinery Technician
350	Mr Peter Cartwright	✗	Support Worker
351	Sharn Forsyth	✗	Not stated
352	Council of Small Business of Australia (COSBOA)		Association
353	Audrey and Tom McDonald	✗	Not stated
354	The Original Pancake Kitchen	✓	Owner/Operator
355	Mr Neil White	✗	Not stated
356	Ms Denise Woolsey	✓	Owner/Operator
357	Indiyum Restaurant Pty Ltd.	✓	Owner/Operator
358	Sorelle Restaurant	✓	Owner/Operator
359	Chocolate @ No. 5	✓	Owner/Operator
360	Via Italia	✓	Owner/Operator
361	Puccini's Restaurant	✓	Owner/Operator

362	Pat Francis	✗	Not stated
363	Melvyn Cheal	✗	Not stated
364	Mr Carlos Van Nek	✗	Picker
365	Mr Mark Bondfield	✗	Not stated
366	Mr Don Smith	✗	Teacher
367	Mr John Deacon	✗	Clerk
368	Mr Bill Shaw	✗	Not stated
369	Mr Russ Webb	✗	Senior Traffic Operations Controller
370	Mr Luke Hays	✗	Public servant
371	Mr Micheal Puttock	✗	Assistant Train Driver Lvl 2.5
372	Ms Karen Lewis	✗	Senior School Administrative Officer
373	Ms Maria Riet	✗	Postal Worker
374	Ms Mel Rushby	✗	Engine Room Operator
375	Mrs Mary Madigan	✗	Real Estate
376	Mr Brett Griffiths	✗	Registered Nurse
377	Mr Tom Simpson	✗	Postman
378	Ms Emily Flett	✗	Therapeutic Youth Worker
379	Cian O'Dwyer	✗	Banker
380	Mr Steven Diston	✗	Electrician
381	Mr Dan Bourke	✗	System Administrator
382	Mr Graeme Edgerton	✗	Security Guard
383	Mr Edward Godwell	✗	Manager
384	Vera Kaliczinsky	✗	Library Technician
385	Mr Loukas Mavrikios	✗	Warehouse Worker
386	Ms Annette Wood	✗	OHS
387	Nissanka Jayalal	✗	Fitter
388	Mr Max Popovic	✓	Chef
389	Mr Steven Curren	✗	Maritime Communications Officer
390	Mr Keith Hailey	✗	Stevedore
391	Mr Kirk Paterson	✗	Stevedore
392	Mr Owen Bennett	✗	Gardener
393	Ms Tracy Roberts	✓	Room Attendant Supervisor
394	Mr Andrew Mahar	✗	Stevedore
395	Mr Phil Graham	✗	Electrician
396	Ms Joan Cottrell	✗	Personal Carer
397	Mr Ronald Maskell	✗	Factory Worker
398	Bernie Maxwell	✗	Procurement Officer
399	Mr Tarek Soueid	✗	Not stated
400	Mr Bruce Campbell	✗	Safety Practitioner
401	Ms Ann Holmes	✗	Training Integrated Rating

402	Ms Janice Poulson	✗	Counsellor
403	Mr Jeff Cassar	✗	Stevedore
404	Mr Evan Walters	✗	Workshop Supervisor
405	Mr Daniel Conway	✗	Machine Operator
406	Mr Clinton Lewin	✗	Industrial Officer
407	Mr Reindert Toia	✗	Processs Worker
408	Mr Nick George	✗	Materials Controller
409	Mr Shane Larson	✗	Fitter and Turner
410	Mr Tim Sezai	✗	Not stated
411	Mr Kevin Eagle	✗	Deckhand
412	Mr Shane Van Heusden	✗	Merchant Seaman
413	Mr Russell Cavanagh	✗	Truck Builder
414	Mr Dale Menadue	✗	Apprentice Mechanic
415	Queensland Council of Unions		Union
416	Unions NSW		Union
417	United Voice		Union
418	Department of Education, Employment and Workplace Relations		Government Body
419	Australian Industry Group		Association
420	Mr Greg Hollands	✓	Owner/Operator
421	Mr Anthony Bray	✗	N/A
422	Mr Gary Harrower	✗	Union Organiser
423	Sergio Schiessler	✗	Mechanic
424	Kim Lindgren	✗	Boiler Maker
425	Mr Glenn Jones	✗	Terminal Operator
426	Mr Peter Faith	✗	Owner/Operator
427	Mr Darron Hull	✗	Bus Driver
428	Mr Stephen Miller	✗	Linesman
429	Mr Roger Mcarthur	✗	Electrician
430	Mr Guy Henderson	✗	Fitter
431	Mr Randall Bowley	✗	Storeman
432	Ms Tamara Lawson	✗	CSO
433	Mr Peter Cairns	✗	Senior Nurse
434	Rangi Rewharewha	✗	Not stated

ANNEXURE 2

Cafe owner pays penalty as staff enjoy higher rates

REBECCA PUDDY

WHEN Colin Baldock made the decision to shift from farming to buy a cafe franchise four years ago, he did not anticipate the financial woes he now faces.

He has been considering closing his Jones The Grocer cafe in Adelaide at weekends and on public holidays since the Gillard government overhauled its workplace awards last year, which he says benefit workers at the expense of small business.

"The new modern award was a wonderful opportunity to make the system sensible," he said. "Instead, union cronies entrenched in the 18th century have enshrined Sundays as untouchable in what is a seven-day industry."

In 2009, as workplace relations minister, Julia Gillard instructed Fair Work Australia to give special consideration to trading hours and labour-intensive work in the restaurant and cafe industry. But the award, effective from

January last year, stipulated penalty rates for casual staff on weekends and public holidays, despite the fact that the industry relied heavily on casuals.

Mr Baldock said he had employed staff under workplace agreements that paid a flat rate across the week, but under the new award he paid penalty rates of up to 250 per cent.

He said his unqualified cook who worked weekends earned more than the head chef.

"Seventy to 80 per cent of people in the industry are on less than three shifts a week," he said.

Restaurant and Catering Industry Association chief executive John Hart said a survey by his organisation found businesses were struggling.

"The increases over increases brought about by the modern award and then topped off by competition has put significant pressure on businesses who are now struggling to stay afloat," Mr Hart said.

"For the first time, the rate of closure has exceeded the rate of

opening.

"All systems designed within the modern award are designed for nine-to-five businesses and haven't taken into account the businesses that operate outside these hours."

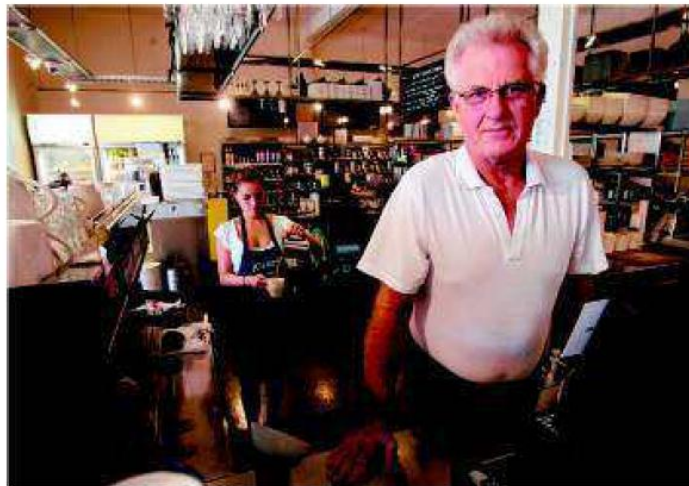
The association also blamed the mining boom for increased competition for staff and higher wages in a "two-speed economy".

"When industry regulation was more flexible, there was more they could do," Mr Hart said.

"Now, the only options are to cut hours or cut staff."

A spokesman for Workplace Relations Minister Chris Evans said the survey did not represent the views of all businesses in the sector.

"The government's focus is on reliable, robust data, all of which shows that the Fair Work Act continues to deliver in a range of areas, including historic levels of agreement making, moderate wages growth in the private sector and continued low levels of industrial action," the spokesman said.



KELLY BARNES

Jones The Grocer cafe owner Colin Baldock yesterday

Labor's big job-killing machine

January 16, 2012

Opinion – Paul Sheehan

My favourite local restaurant was packed on Saturday night, as usual. What was unusual was that its co-owners, who used to take weekends off, were hard at work.

One was in the kitchen, cooking and running the staff; the other was front of house, running the floor. They each work six shifts a week and told me it is the difference between the success of their business and mere subsistence.



This, in microcosm, is why unemployment must go up in Australia this year. It must rise to 6 per cent, not the 5.5 per cent forecast by Treasury. What has happened in my local restaurant is happening in thousands of small businesses across the country.

Advertisement: Story continues below

The owners would prefer to be working less. They would prefer to have hired replacements for the two full-time staff members who departed. They wanted to open a second restaurant but now won't. Instead, they are adapting to the frontal assault on small business by federal Labor's industrial relations policy.

Julia Gillard's sweeping Fair Work Act and its Fair Work Australia bureaucracy are proving to be an unfolding disaster for job security and job creation.

If you want to see why, go to the real world of small-business entrepreneurship, which is so alien to the culture of the federal government, and talk to the owners of retail stores who have been visited by inspectors from Fair Work Australia and given dozens of pages of new regulations with which they must comply.

The retail sector is already under tremendous structural stress from internet commerce.

Talk to restaurant and cafe owners about the punitive penalty rates coming into force under what Labor calls "modern" awards. Labor said it would modernise awards by replacing multiple state and federal awards and this would lessen the burden on business.

Instead, the new awards have introduced greater complexity, greater uncertainty, greater inflexibility and greater costs. These "modern" awards are job killers.

Talk to employers who are avoiding putting on full-time staff because of the Fair Work Act and the intrusions of the micro-managing Fair Work Ombudsman. The regulations are so complex that most employers can't work them out.

Neither can the Fair Work Ombudsman. After accusing 25 per cent of retailers of underpaying their staff and thus owing a large backlog in back pay, the Ombudsman's office was revealed by the opposition spokesman on industrial relations, Senator Eric Abetz, to have made multiple errors in its calculations and to have relied upon a faulty database. The regulator's online pay calculator has thus been destructive of certainty and efficiency. Its website is also a labyrinth of arcane bureaucracy.

Talk to some of the legion of skilled people who can't find full-time work because 40 per cent of new jobs are casual or contract.

Talk to employers who are having to deal with an explosion of litigation under the Fair Work Act. In the law's first full year of operation, the number of formal cases lodged with Fair Work Australia leapt 110 per cent to more than 37,000 cases.

Talk to companies, large and small, about how the Fair Work Act provides a multitude of new avenues for formal dispute by unions. The spate of lockouts by companies reflects this litigious new reality.

The government is now reviewing the operation of the Fair Work Act, at the behest of the unions, not because of its negative impact on job creation but because the unions don't like the lockout powers companies have under the act. Expect the lockout provisions to be revisited.

Talk to building companies about the pending demise of the Australian Building and Construction Commission, which curbed the endemic blackmail, intimidation and corruption in the building industry. The main building union, the Construction, Forestry, Mining and Energy Union, in concert with the Greens, campaigned relentlessly and successfully to have the ABCC shut down.

Add, to all this, the other sweeping new industrial relations legislation which has been introduced by the federal government, the Work Health and Safety Act, which turned dysfunctional from the outset.

On January 1, Australia was meant to have a harmonised federal and state occupational health and safety regime under the federal act which, together with an accompanying code of practice, imposes 885 pages of safety regulation on workplaces.

Four states - Victoria, Western Australia, South Australia and Tasmania - balked at introducing the new law on January 1.

None has introduced the new law. NSW introduced an act which does not harmonise with the federal law in some important respects.

Western Australia and Victoria, both with non-Labor governments, are concerned the model federal legislation allows unions a de facto power to use health and safety issues as a surrogate for industrial action without paying an industrial penalty.

The act gives union officials the power to enter workplaces on safety concerns. It gives safety delegates in the workforce, who in practice would likely be union delegates, the power to pull workers out, citing safety grounds.

The onus of proof then lies with the employer, not the employees.

Because Gillard is completely captive to the union movement, she has appointed a former union official, Bill Shorten, as Minister for Employment and Workplace Relations, and they are adding another layer of complexity to industrial relations via expanded anti-bullying regulations.

This vague, subjective area of litigation will be a boon to industrial lawyers, whose ranks have already exploded under the Fair Work Act, and to union delegates. It will be yet another chilling factor for job-creators to consider.

In short, expect unemployment to rise, job insecurity to rise, union power to increase and the federal bureaucracy to expand for the duration of the Labor-Greens-Windsor-Oakeshott government, while it blames everyone but itself.

Labor may only have 29 per cent support in the polls, but that support is built on unions, especially the public-sector unions, and it is their power the federal government is committed to entrenching as its first and enduring priority.

Fair Work fails to cater for us, say cafes



Chris Papagianis at his Glen Iris milk bar and cafe in Melbourne with wife Fil, second from right, and employee Lataya Ferligoj behind the counter

AARON FRANCIS

BEN PACKHAM

THE restaurant industry is demanding an exemption from the Gillard government's key industrial relations rule that says workers must be left better off financially under any new workplace agreement.

It has also warned that diners will pay more for meals and face widespread weekend surcharges unless ballooning labour costs can be wound back.

Days after celebrity chef George Calombaris complained of having to pay \$40 an hour for waiters, the Restaurant and Catering Association has released a 10-point list of issues it wants addressed in upcoming reviews of the Fair Work Act and the modern award system.

In a key demand, restaurant employers want to sideline the government's "better off overall" test that ensures all individual and

Penalties add up to headache for boss

AMOS AIKMAN

EVERY time Chris Papagianis wants to pay his staff he faces a "minefield" of rules and rosters and several hours of arithmetic warfare just to figure out who gets what.

The small business owner, who employs about 22 people at his cafe and milk bar in the Melbourne suburb of Glen Iris, is at his wit's end.

Under the system imposed by the Fair Work Act, those 22

collective deals must exceed the terms of the award and its lucrative penalty rates for weekends and public holiday shifts.

They say the test is overly restrictive, preventing mutually

beneficial deals with staff who want to work outside standard business hours.

The association's 7000 members also want an end to the system of "penalties upon penalties" staff, some as young as 16, fall into seven different pay categories; each category has five rates, making a total of 35 possibilities for every hour worked — and, complains Mr Papagianis, that's before you begin to think about holidays and super.

"At the end of each week I have to crunch those numbers manually," he said. "It takes at least a couple of hours each time. If I leave the floor I have got to employ someone to replace me. (But) if I don't I have to take the work home."

Findings by the Fair Work Ombudsman that a quarter of retailers are underpaying staff

sparked an outcry from small business organisations, which argue pay rules are now so complex their members don't know what to do.

The executive director of the Council of Small Business of Australia, Peter Strong, said pressure was being placed on employers to "break out of a very silly set of rules".

"There's a lot of pressure on people to break rules because those rules are costing jobs, and costing income for people who want those jobs," he said.

The chief executive of Restaurant & Catering, John Hart, described the modern

Continued on Page 4

by which casual staff make time-and-a-half on Saturdays, time-and-three-quarters on Sundays and double-time-and-a-half on public holidays on top of their 25 per cent casual loading.

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INSIDE

FOR an industry with notoriously thin margins, and where a lot of trade occurs on weekends and public holidays, the new modern award is causing real harm.

JUDITH SLOAN F4



In other demands, they want to be able to sack staff more easily and create dual pay scales with lesser rates for smaller restaurants and cafes.

The association will urge changes in this year's Fair Work Act review to allow deals in which the parties agree on non-standard hours, eliminating weekend penalty rates. Such deals would not be

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THE AUSTRALIAN 12 JANUARY 2012

JUDITH SLOAN
COMMENT



IT was only a matter of time before restaurant owners revolted. Faced with steep pay rises resulting from the new modern award, the industry as a group has come out fighting.

On the face of it, the base rates of pay in the Restaurant Industry Award don't look too high — between \$15.43 and \$16.58 for waiting staff. But add 25 per cent for the casual loading and the numbers begin to climb.

Then add 150 per cent for Saturdays, 175 per cent for Sundays and 250 per cent for public holidays and all of a sudden the numbers become truly scary.

For a Level 2 casual waiter working on a public holiday, this works out at more than \$50 an hour, and this does not take into account the on-costs of superannuation, workers compensation and the like.

Now Workplace Relations Minister Bill Shorten maintains that none of this is a problem. According to him, "penalty rates compensate wait staff and others who have to work late nights, public holidays and weekends while everyone else gets to spend this time with family and friends."

Clearly, the fact that some people actually prefer to work at night and on weekends and public holidays — university students, some parents with young children — has not dawned on him.

Responding to chef and restaurant owner George Calombaris's complaints about penalty rates in the industry, Shorten suggested that "if George wants to bargain with his workers and improve productivity and be even more

competitive then the tools exist". It would be intriguing to know what the minister has in mind — running the tables with plates loaded up rather than walking or making espressos twice as fast, perhaps. What the minister also doesn't mention is that enterprise agreements under the Fair Work Act must meet a better off overall test for all workers.

So George can cash out the penalty rates in an agreement by paying a higher base rate, but no worker can be worse off relative to the award. Short of these mysterious productivity gains becoming apparent, it is hard to see how restaurant owners would gain much. It is not surprising there is a low take-up of agreements in the industry.

For an industry with notoriously thin margins, and where a lot of trade actually occurs on weekends and public holidays, the new modern award is causing real harm. In fact, it is not uncommon to see restaurants closed on Sundays and public holidays — the losses are simply too great.

Of course, this is a lose-lose situation. The choice for customers is more limited. There is no work for staff and the restaurant owner must still cover all the fixed costs of the business.

There will be a review of modern awards this year, conducted by Fair Work Australia, but I would not advise the industry to hold its breath.

But there is a relatively simple solution. Inserting a preferred hours clause into the award would allow employers to pay the base rate of pay to employees who nominate a preference to work during weekends and public holidays. This would see more hours of work being offered at those times that meet the workers' preferences while containing employers' costs.

It's hard to see Shorten warming to the idea, however. He is adamant that "the Gillard government won't be adopting the low road of paying already low-paid workers less".

I wonder whether Bill regards \$50 an hour as low pay?

Fair Work fails us, say cafes

Continued from Page 1

allowed under the "better off overall" test.

The association's Victorian president, Matteo Pignatelli, owner of Matteo's restaurant in Melbourne, said the change would benefit workers and their employers.

"There should be preferred hours," he said. "So we say, 'Tell me when you want to work'. And so they say, 'I want to work Wednesday to Sunday'. They would become ordinary hours. But if I make you work on a Monday, when you have your soccer training, then I would have to pay you more."

Many restaurants were deciding not to open on Sundays and public holidays to avoid steep labour costs, Mr Pignatelli said.

ACTU secretary Jeff Lawrence said the Restaurant and Catering Association was a "serial offender" in attempts to drive down industry conditions. "This is about reducing people's take-home pay. And that will be vigorously resisted," he said.

Across the industry, average labour costs are running at more than 40 per cent, the association

says, well above the traditional 30 per cent benchmark.

Chef Teague Ezard, who runs restaurants in Melbourne and Sydney, said Labor's Fair Work Act had raised his wage costs by about 5 per cent.

He said restaurants that opened on weekends and public holidays were likely to introduce surcharges to recoup rising costs. "It might be 10 to 15 per cent."

Opposition industrial relations spokesman Eric Abetz said he had heard similar complaints from many restaurant and cafe owners.

"There is a good argument for Fair Work Australia to reconsider the way that payments are made to workers in the hospitality sector," he said. "And that is why I think a degree of flexibility might need to come into play as well."

Workplace Relations Minister Bill Shorten said cutting wages was not the right way forward. If penalty rates were axed workers might start to expect greater tips from restaurant patrons to justify giving up their weekends. "We don't want to become like the Americans to the extent that the industry just relies on tips."

Penalties a headache for boss

Continued from Page 1

award, an agreement governing pay, as "not very modern".

"We really don't have an award that meets the needs of a 24/7 industry," he said.

The executive director of the Convenience and Mixed Business Council, Domenic Greco, said his members were often baffled by the rules. "It's extremely difficult for them to understand what they need to do," he said. "It's getting to the point where it's easier for them to employ people off the books."

Mr Papagianis said while all his employees were legitimate, he had spoken to six or seven other business owners in the process of trying to buy a new cafe, all of whom had told him they were paying some staff cash only.

The Fair Work Ombudsman's audit led to 755 staff receiving \$585,000 in back pay following random checks on about 2000 businesses.

Fair Work Ombudsman Nicholas Wilson said in a statement: "Many employers underpay as the result of a lack of information or they make mistakes interpreting the information they have."

"Our proactive work helps improve understanding among employers of their workplace responsibilities."

The executive director of the Australian Retailers Association, Russell Zimmerman, said the fact

PAY SCALES

Lataya Ferligoj, full-time level 1 retail employee, aged 21

Weekly full time and part time

- Mon-Fri weekly rate, 38 hours: **\$647.10**
- Ordinary hourly rate, 7am-9pm: **\$17.03**
- Hourly rate, Saturday 7am-6pm: **\$21.29**
- Sunday 9am-6pm: **\$34.07**
- Public holidays, minimum three hours: **\$42.59**

Overtime FT and PT

- Mon-Sat first three hours: **\$25.55**
- Over three hours and Sunday: **\$34.06**

Source: Convenience and Mixed Business Association

that three-quarters of targeted retailers were compliant showed that business owners were trying to do the right thing.

A spokeswoman for Unite, a union representing retail and hospitality workers, said it was "nonsense" that employers did not have enough information. She said employers were getting away with "paying their employees whatever they wanted" and that the ombudsman was not doing nearly enough.

Mr Papagianis said conditions under Work Choices were a lot easier.

"There was a lot less administration to do," he said.



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

IN MY OPINION

with Peter Anderson

Penalty rates and loadings throwbacks to long ago



WHILE I don't agree with employment Minister Bill Shorten's public defence of penalty rates, it's a good thing there is debate about what is a fair reward for hours worked.

Australian employers pay good wages. For a wealthy country that wants high living standards, that's fair enough. But is it fair to pay people different amounts for doing the same job depending only on the time of day or the day of week?

Most employers can fund wage obligations, so long as wages rise somewhere in line with sales, profits or productivity.

But Australia's industrial relations system is riddled with high on-costs. These are compulsory payments on top of wages. They include penalty rates, shift rates, overtime rates, allowances, annual leave loading, superannuation levies, workers compensation premiums and different forms of paid and unpaid leave.

Some are forced by governments, some by industrial tribunals such as Fair Work Australia. None takes account of different capacities of businesses. Small or not-for-profit employers are assumed to afford them in the same way as large corporates.

These on-costs add at least 30 per cent to the wages bill of today's employers. It's one reason why Australia has become a high-cost country to employ and do business.

Understandably, staff don't see much difference between dollars in the pay packet from wages and those from penalty rates. They should. The case for good wages is strong. The case for high penalty rates is weak, and weakening as each year passes.

Penalty rates were introduced to penalise employers from trading and employing staff during what were unsociable hours — late nights or weekends.

A generation later, the community expect shops, cafes, pharmacies and tourism operators to be open 24/7. In service

industries, the Monday to Friday trading week has gone with the horse and buggy.

Longer trading hours has not meant longer working hours. A generation ago, the standard working week was 40 or 42 hours. Now it's 38.

Businesses now hire casual and part-time staff, often university students who don't find working evenings or weekends an inconvenience — they are the hours when work is possible around the week's study or family commitments.

The industrial relations system should be honest. Don't call penalty rates compensation for hours a businesses should not trade when they are the hours customers expect a business to open.

The same goes for the 17.5 per cent annual leave loading. It was meant to be paid to people who earned shift loadings when at work so they didn't drop income when on leave. Trouble is, it's paid to almost all workers whether they work shifts or not. How stupid is the system when it pays us more for being on holidays than when we are at work?

Taking a penalty rate or loading to compensate for something that no longer exists is an ethical dilemma, even if it's legally fair enough while the law stays that way.

If these penalty rates and loadings are from another era and don't fit their original purpose, then what should be done about them?

THERE are two sensible answers. Governments and industrial tribunals should have an honest review of whether their original rationale exists. If it doesn't, lawmakers should phase them out on an industry-by-industry basis.

And businesses should be allowed to incorporate penalty rates into base rates of pay on an enterprise by enterprise basis. This way staff don't lose income from one pay packet to the next, and an anomaly in the system is addressed.

For this to happen, the rules about bargaining and agreement-making need to be more flexible than Julia Gillard's Fair Work laws. And before anyone claims this would be a return to WorkChoices, it is not.

Twenty years ago, I negotiated the removal of penalty rates in a key retail industry award in return for Saturday afternoon trading and a higher base rate of pay. One of Australia's largest unions, the SDA, was a party to that agreement. It was common sense.

Peter Anderson is chief executive of the Australian Chamber of Commerce and Industry.



Media Clip

Australian Chamber of Commerce and Industry



Retail slump: Zachary Angelidis at his Castle Coffee Bean in Castle Hill. Picture: Pellegrini. *Source:* The Sunday Telegraph 7/8/2011

STRUGGLING NSW businesses are slashing spending and laying off staff in the face of the worst domestic retail market in half a century.

While retail sales rose by 2.6 per cent across the nation last financial year - the weakest increase since the 1961-62 recession - spending in NSW has gone backwards.

The volume of food bought dropped 1 per cent, according to the Australian Bureau of Statistics, while the volume of clothes and shoes fell 6 per cent and cafe and restaurant patronage by 8 per cent.

Russell Zimmerman, from the Australian Retailers Association, said people were finding ways to make do with less - particularly when it came to food and clothing - as power prices rose and the economy slowed.

Hardest hit are independent shops in smaller centres and high streets across the suburbs. The Sunday Telegraph spoke to many shop owners struggling to make ends meet.

Cherrybrook butcher Wayne Shipley said he had cut work hours and was looking at ways to cut costs.

He said he hadn't seen consumers so pessimistic in his 30 years in the business.

Castle Coffee Bean owner Zachary Angelidis said he had been forced to cut staff at his Castle Hill cafe and now mans the shop by himself seven days a week to meet the rent. "I am in survival mode," he said.

"After rent and costs I get \$200 a week. That's about \$2 an hour."

Even sales and promotions had failed to entice customers to part with cash, according to Sharyn Caracatsanis, who owns Collage Boutique in Sydney's northwest.

"A lot of our loyal customers are walking past saying they can't come in because they shouldn't be spending money," she said.