

THE SENATE
STANDING COMMITTEE ON EDUCATION, EMPLOYMENT
AND WORKPLACE RELATIONS
Inquiry concerning the
Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012

Introduction

There is a slick car advertisement on TV which advocates “*We work to live, and we live for weekends.*” The proposed Bill not only attacks this popular view of Australian life it also is misguided in its application.

This Bill serves to draw attention to **a vision that weekends don’t count anymore and cheaper Sunday trading will be enhanced by scrapping penalty rates for some hospitality and retail workers.**

If this Bill becomes law by attacking the penalty rate system that applies to a small business sector, its proponents would view this as a “good” outcome for “small business”. In so doing, it may serve the interests of only a limited number of people.

Of genuine concern to many in the community is that this Bill does little to enhance the lives of everyday Australians. On the contrary, it has the potential to further diminish the values on which our society has been based.

On one front, should this Bill become law, the **employees in this sector would be disadvantaged compared to workers in other industries employed by small business owners.** The Bill ignores not only the bigger industrial picture where penalties apply but, in the process, does not adequately address the reality of alleged economic gains.

The Bill’s advocates assume but do not actually prove the nature and extent of the economic gain for the retail and hospitality sector and for the community at large. Various assumptions and/or assertions are made but there is a **lack of hard evidence to substantiate how employers would be better off either in terms of increased turnover or profit taking if their workers’ penalty rates were axed.**

Many questions remain unanswered. What social cost has been factored into the support arguments for this Bill? Would everyday Australian consumers spend more if penalty rates were axed? By default, is the Bill establishing a system whereby tipping will reward those employees who cannot access penalty rates?

Parliament needs to acknowledge the relevance of community attitudes/values in determining **the “public interest”**. This Bill and the supporting explanatory commentary in its current form fail in this important regard. **It fails to address and/or reassure Australians that what is being proposed would be “good” for the community at large.**

On a more holistic front, this Bill has the potential to further downgrade the values on which the Australian society was founded.

For example, the concepts and values found in documents such as Catholic Social Teachings (and which most reasonable, fair minded people in Australia would not object to) speak of a **just wage**: “We consider it our duty to reaffirm that the remuneration of work is not something that can be left to the laws of the marketplace. Nor should it be a decision left to the will of the more powerful. It must be determined in accordance with justice and equity; which means that workers must be paid a wage which allows them to live a truly human life and to fulfil their family obligations in a worthy manner.”^[1]

Other factors too enter into the assessment of a just wage; namely the effective contribution which each individual makes to the economic effort, the financial state of the business for which she/he works, the requirements of the good of the particular country, and finally, the requirements of the common good of the universal family traditions.

Our community is genuinely healthy when all people, not only the retail and hospitality sector, flourish. This Bill conveniently ignores this reality.

Law-makers need to remember human beings are not destined for isolation. We are essentially social creatures who flourish in and through efforts to develop genuine community where the pursuit of the common good is a shared endeavour.^[2] “Every social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family.”^[3]

This concept of the common good often seems to be ‘*missing in action*’ in contemporary Australian public life.

It is missing from this proposed Bill.

In garnishing support for this Bill, it behoves Senator Xenophon and/or proponents of this Bill to address and convince us all how this measure would really enhance all our lives. No hard evidence has been supplied to support the Bill’s provisions.

The US experience and their Catholic Bishops’ views are of some relevance to a consideration of this Bill: “The obligation to ‘love our neighbour’ has an individual dimension, but it also requires a broader social commitment to the common good. We have many partial ways to measure and debate the health of our economy: Gross National Product, per capita income, stock market prices, and so forth. The Christian vision of economic life looks beyond them all and asks: does economic life enhance or threaten our life together as a community?”^[4]

The US Catholic Bishops also go on to say: “All work has a three-fold moral significance. First, it is a principal way that people exercise the distinctive human capacity for self-expression and self-realization. Second, it is the ordinary way for human beings to fulfil their material needs. Finally, work enables people to contribute to the well-being of the larger community. Work is not only for one’s

^[1] Pope John XXIII (1961) *Mater et Magistra* #

^[3] *Gaudium et Spes: Pastoral Constitution of the Church in the Modern World* 26

^[4] United States Catholic Bishops (1986) *Economic Justice For All* #122

self. It is for one's family, for the nation, and indeed for the benefit of the entire human family.”^[5]

Sentiments that would apply equally to both employees and employers.

In summary

Rather than a Bill that supports vested interests and disadvantages some individual employees by placing a dubious patch on what might or might not be a real industrial concern for all stakeholders within the retail and hospitality sector, the supporters of this Bill could better serve Australia's interests identifying and/or clarifying for our law makers what is important to us as Australians in our everyday lives – what values are we aspiring to as a community and what industrial practice might support this value proposition?

There is no reason to doubt that most **Australians support a “fair go” for all**. This **Bill fails in making the world more human (and humane) by not planting desires for justice and equality and respect deep within the hearts of human beings**. The proposed Bill by unfairly targeting one sector of our workforce ignores such principles that arguably, are endorsed in the hearts of our fellow Australians, deeply endorsed, if not always consistently applied. It should not proceed and/or be supported in its current form.

^[5] United States Catholic Bishops (1986) *Economic Justice For All* #97