



COSBOA Submission to the Senate Inquiry into the  
*Fair Work Amendment (Small Business – Penalty  
Rates Exemption) Bill 2012*

October 2012

*Why is no job and no income better than earning  
\$15 an hour in a shop or restaurant?*

*Why do small business people need to close their  
business and another person lose the only job they  
can have because of over inflated penalty rates?*

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

The Council of Small Business Organisations of Australia

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The Council of Small Business Organisations of Australia (COSBOA) appreciates the opportunity to provide a submission to this review.

We have provided a submission based on the changing nature of society, the changing needs of people seeking employment and the changing approach to workplace relations for small businesses.

Our response is based on the facts that:

- Small businesses are run by people.
- The small workplace is inherently different from the larger workplaces where there are pay clerks and experts. The workers in a small workplace have closer relationships with each other, and this includes the business owner.
- As at 30 June 2011 93% of retail businesses were small and some 84% of businesses in Accommodation, Cafes and Restaurants were small. These industries employed around 1m people. These businesses are often the largest group of employers in regional areas.
- The small workplace will consist of a group of people all earning a living. The owner of the business and the employees will all earn income from the business.
- Small business people do not want to pay low wages to their co workers and would often like to offer more work but cannot do so due to higher wages and lower sales.
- The nature of society has changed: trading hours of shops and restaurants have changed to 7 days a week; consumers expect service 7 days a week; rural areas rely upon tourist dollars to maintain jobs and their economic security; many people cannot work during the traditional Monday to Friday period and can only work on weekends or in the evening; as the population ages more and more people are seeking employment to supplement their income and also give them access to activity and interaction with people.

## **Need for a change**

The need for a review of the penalty rates of the Fair Work system became obvious to COSBOA after the penalty rates for Sundays and for public holidays were increased in various jurisdictions as part of the Fair Work changes in 2010. Prior to this increase the penalty rates for these days was time and a half and this changed to double time for Sundays and Double time and a half for public holidays.

The results in the jurisdictions where the change took place were that:

- Many shops, cafes and restaurants closed on Sundays and public holidays due to the wage increases making trade unprofitable on those days. There are no statistics on how many shops and cafes closed and this needs to be determined, there were at least several thousand.
- The workers in these businesses lost their jobs.
- Town centres in rural areas closed down affecting tourism and removing job opportunities.
- Workers asked their employers to continue to employ them on the lower rate.
- Employers, men and women, had to make a decision to either support their current worker and maintain their employment at the lower rate (at the same time breaking the rules of the Fair Work System), or follow the rules and let down their employees, their employees families and their community.
- Small business owners in large shopping centres were forced to work six and seven day weeks as their leases required them to open every day. This affects their health and their family lives. They would rather employ someone but the increase to double time was not financially viable.

In the other jurisdictions, in the main, the double time and double time and a half regimes had been in place for some years. This outcome therefore highlights that in those jurisdictions where the higher rates had been in place for some time job opportunities were being lost.

There is anecdotal evidence that this higher rate of pay forces employees and employers to agree on a lower rate, an illegal activity in which both parties hope they will not be caught but the employer is at higher risk.

We need a better system that allows those people who want to work on Sundays and public holidays to do so and that the business owner can also be comfortable with the budget effect on running costs. We need a system where everyone is a winner.

The other area of concern that arose as a result of the increase in penalty rates is the people who are negatively affected by the loss of jobs or lack of access to jobs. Often these are people who can only work on weekends and who are available for public

holidays. This includes school students, university students, and stay at home parents who want the opportunity to get out of the house and earn a few of their own dollars. More and more older people are also seeking work on weekends to supplement their pension and give them activity and the opportunity to interact with other people. A job is vital for income but it is often not just income as the attraction is also the life style and activity a job provides.

These groups obviously lose out under the current approach.

There has long been an argument that dropping penalty rates will disadvantage workers, we believe it will advantage workers by creating more jobs. Workers can only be disadvantaged by loss of jobs, lack of access to jobs or unacceptably low wages.

We do not support paying low wages to workers nor do we support removing any special loadings and overtime. When workers go beyond 38 hours, and in some cases less time, they then earn overtime, this is not challenged. The loadings that exist in certain cases are there for a reason and in most should be retained.

We also believe there must be a minimum wage for weekends and public holidays. We are aware that there are some workers who would work for very low rates and there are some employers who would take advantage of this and therefore a minimum wage is essential.

COSBOA supports the proposed amendment as it will create work for those most in need, give young people work experience and an income, create vibrant town centres and assist in developing and maintaining healthy innovative small businesses in these vital industry sectors.

The future of the Australian economy is not based on mines and big business but on the millions of small business people who provide innovation, jobs and flexibility. Small business, along with farms, is the backbone of small regional communities. We need to ensure that small businesses in retail, cafes, restaurants and the like can trade when the community needs and not have opening hours decided by over inflated pay rates.

**Ends**