

20 September 2012

Committee Secretary
Senate Education, Employment and Workplace Relations Committees
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ewwr.sen@aph.gov.au

Dear Madam/Sir

RE: Inquiry into Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012

UnionsWA is Western Australia's peak union body, representing over 30 affiliated unions and 170,000 union members. UnionsWA is deeply concerned that if passed the *Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012* would result in a loss of take-home pay or the need to work longer hours for many who are already low paid. Further if enacted it would remove an important check that helps to minimise the intrusion of work into the family and community lives of working people.

The Premier of Western Australia and employer groups have been increasingly calling for the abolition or dramatic reductions in penalty rates. Those same interests in WA sought and have recently implemented extended Sunday Trading under the existing arrangements for penalty rates.

UnionsWA objects to the *Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012* on the grounds that it will result in:

- **Pay cut.** Reducing or abolishing penalty rates will, in effect, result in a pay cut for many low paid working people, particularly those that are award reliant and in the retail or hospitality sectors.

- **Loss of time with family and in the community.** Penalty rates are just that – a penalty on employers to keep a check on unsociable hours of work limiting time that working people have with their family or in the community activities.

Reducing the pay of low paid workers

According to the WA Department of Commerce, around 10 per cent (or 120,000) of WA employees have their pay set by awards and of those 41 per cent are in the accommodation and food services industry.¹ These employees are those most likely to be affected if the Amendment Bill is passed.

Data from the Australian Bureau of Statistics data on Employee Earnings and Hours in WA (Table 1) show that, in terms of ordinary time hourly cash earnings, workers in the accommodation, and food and beverage services industries earn respectively around 77 per cent and 42 per cent less than the all industry average in this state.²

Table 1

WA Detailed industry Classification	Ordinary Time Hourly Cash Earnings (OTHCE)	% deviation from average OTHCE
44 Accommodation	\$19.40	-76.8%
45 Food and beverage	\$24.10	-42.3%
All industries	\$34.30	0.0%

Even with penalty rates available in state and federal awards, these workers are still well behind average earnings in WA. If penalty rates are reduced or stopped as proposed by this Amendment Bill then the incomes of many working people will be even poorer.

It is worth pointing out that workers in these industries are unlikely to be in a position where they can bargain for improvements over and above their award conditions. In their *Report on low paid work and low paid workers in Western Australia*, the Women in Social and Economic Research (WiSER) unit at the Curtin Business School found that few low wage workers who were award dependent were likely to negotiate improvements to their working conditions.

Two main reasons were offered for not negotiating conditions of employment when starting a new position. Firstly, when you need a job, you just accept

¹ 'State Industrial Relations Coverage in WA', http://www.commerce.wa.gov.au/LabourRelations/Content/Publications/Labour_Market_Statistics/Key_Labour_Market_Indicators.html

² 6306.0 - Employee Earnings and Hours, Australia, May 2010, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6306.0>

*what is offered. Secondly, employers have the “upper hand” in terms of a negotiating position, so there is little to be gained by asking for higher wages or conditions.*³

In his second reading speech on Thursday, 16 August 2012, Senator Nick Xenophon stated that

*This bill is an attempt to balance the need for penalty rates and the strain they are placing on small businesses.*⁴

UnionsWA is primarily concerned for the wellbeing of working people and their families and a reduction in penalty pay will mean that many retail and hospitality workers will have to work longer hours to maintain their take home pay.

It is worth pointing out that award-reliant workers in small businesses are on what are likely to be the least favourable pay rates in the country. ABS data on the dispersal of weekly total cash earnings by pay setting methods in Table 1 shows that earnings dispersal for award workers is considerably smaller than for those on collective and individual arrangements. Chart 1 below shows that even the highest paid award workers are likely to be paid less than those on other pay setting arrangements.⁵

Table 2

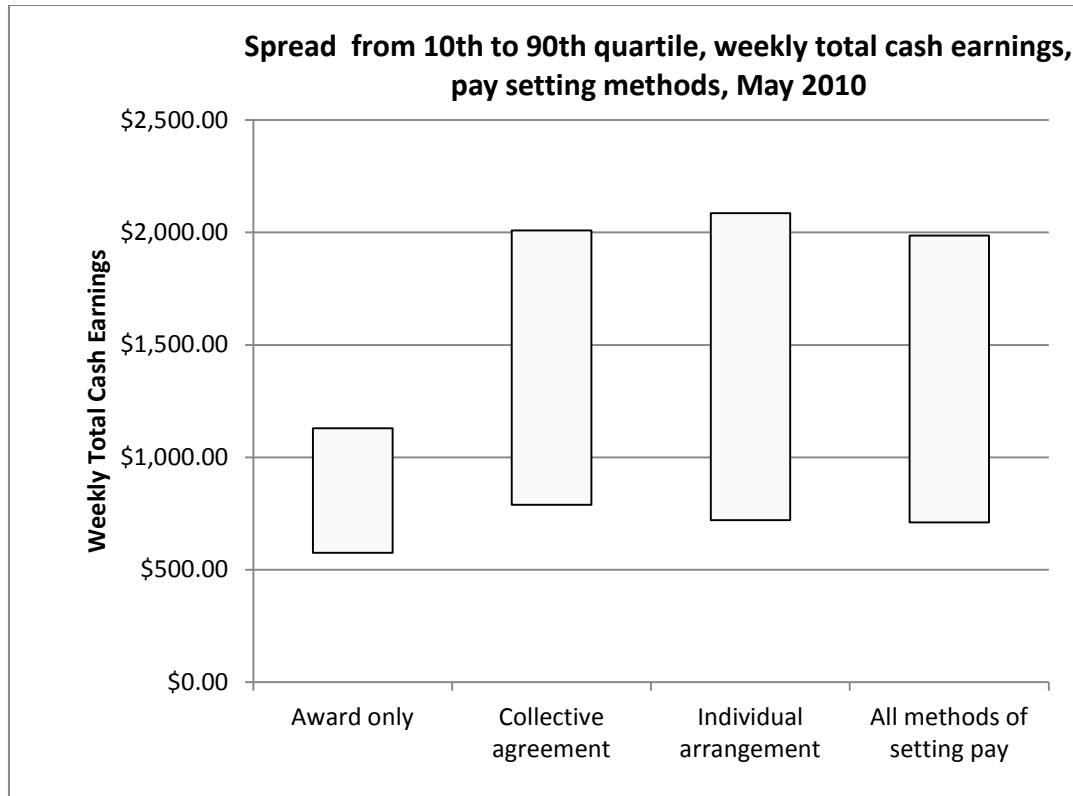
Earnings Percentile	Award only \$	Collective agreement \$	Individual arrangement \$	All methods of setting pay \$
10th percentile	576.00	789.00	720.00	711.00
25th percentile (1st quartile)	646.00	964.00	859.00	862.00
50th percentile (median) (2nd quartile)	762.00	1,232.00	1,070.00	1,115.00
75th percentile (3rd quartile)	908.00	1,584.00	1,478.00	1,513.00
90th percentile	1,129.00	2,009.00	2,086.00	1,986.00

³ WISER - Women in Social & Economic Research, *A Study of Low Paid Work and Low Paid Workers in Western Australia*, (2007) p.36, www.business.curtin.edu.au

⁴ Second reading speech, *Fair Work Amendment (Small Business—Penalty Rates Exemption) Bill 2012*, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillho%2Fme%2Fs883%22>

⁵ ABS 6306.0 - Employee Earnings and Hours, Australia, May 2010

Chart 1



Unsociable hours of work: the impact on families and community

Penalty rates are a penalty on employers and act as a check on unsociable hours. For everyone weekends and after-hours on weekdays are the only significant shared time available to spend with family and in community activities such as sport, volunteering or relaxation. As a check on unsociable hours, penalty rates benefit to the entire community including low and higher income earners as well as businesspeople and their families.

In his second reading speech Senator Xenophon argues that

In many industries, we now have a seven day working week. While weekend penalty rates were originally intended to acknowledge employees' work outside the standard five-day working week, there are now many employees who consider their ordinary hours to include weekends, evenings and early mornings.

Echoing these views WA Premier Colin Barnett suggested in February this year that, with the introduction of Sunday trading in Perth, that he wanted 'a more even pay rate between weekday work and Sunday work and Saturday work', implying that

workers earning weekend penalty rates are somehow a privileged class compared to those who work during the week.⁶ This attack on award workers was recently stepped up by former state Treasurer Christian Porter, who told the HR Nicholls Society in Perth that penalty rates on public holidays were 'costing jobs'.⁷

It is clear that as a society we have not abolished the distinction between weekdays and the weekend. Family celebrations, religious observances, relaxing with friends or sporting events all overwhelmingly occur on weekends.

Why should workers in the small business sector have less time for family and community events because they need to make up their take home pay through increased hours, or have their take home pay reduced if they wish to spend time with family on weekends and public holidays? In the words of commentator Ross Gittins:

*this belief that life would be better if shops, restaurants and places of entertainment were open all hours rests on the assumption you and I won't be among those required to work unsociable hours to make it happen.*⁸

For families with school-age children the continuing relevance of weekend and weekday evenings as the times available for families to share together is evident but not, it seems, to many employers and some legislators.

If unsociable hours of work were available more cheaply than employers would be likely to more often require such work of their employees. Retail and hospitality employment is growing, and these sectors employ significant numbers of young people, including students. In families where a working child and a parent or parents are employed in affected sectors weakening of penalty rates will be magnified. In those families only one or more members needing to work more unsocial hours will dramatically affect shared time.

UnionsWA has analysed data from the ABS CensusAtSchool population sampler, and found that, between 2008 and 2012, the amount of time school students spend in paid work has been increasing, and the amount of time spent with family has been decreasing. Based on a random sample of 200 school students in 2008 and the year so far in 2012, we found that hours spent with family during the year had declined by 14 per cent, and time spent in paid work has increased by 17%.⁹

⁶ 'WA: Debate over Sunday pay for WA retailers', AAP, 22 February 2012

⁷ 'Porter attacks penalty rates', *The West Australian*, 13 September 2012.

⁸ <http://www.smh.com.au/opinion/politics/workers-pay-the-penalty-for-oneway-flexibility-20120403-1wakl.html>

⁹ ABS CensusAtSchool Australia, <http://www.cas.abs.gov.au/cgi-local/cassampler.pl>

Table 3

Year	Total hours weekly in WA	
	Time with Family All years School Students	Paid work All years School Students
2008	2,425	553
2012	2,075	648
% Change	-14%	17%

Conclusion

UnionsWA recommends that the Federal Parliament reject the Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill on the grounds that it would reduce the take-home pay of low paid workers and/or require them to work longer hours to make up for lost income. Further the importance of penalty rates as a check on unsociable hours of work should be acknowledged. Weekends and after hours on weekdays remain important as shared time for families and for community activities.

We thank the Committee for this opportunity to represent the views and concerns of WA union members.

Yours faithfully

**Meredith Hammat
President
UnionsWA**