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AUSTRALIAN INDUSTRY GROUP

Inquiry into the *Fair Work Amendment Bill 2013*

Submission to the House Standing Committee on Education and Employment on behalf of the Fast Food Industry

The Australian Industry Group (**Ai Group**) makes this submission to the House Standing Committee on Education and Employment in response to its inquiry into the *Fair Work Amendment Bill 2013* (**Bill**) on behalf of its Members in the fast food industry, including:

(a) Competitive Foods Australia (Hungry Jacks);

(b) McDonald's Australia Ltd;

(c) Quick Services Restaurants (Red Rooster, Chicken Treat and Oporto); and

(d) Yum! Restaurants Australia Pty Ltd (Pizza Hut and KFC).

These four Ai Group Members make up 47% of the fast food industry.

This submission is made in response to Schedule 2 of the Bill. That schedule proposes to amend section 134 of the *Fair Work Act 2009* (**FW Act**). Section 134 sets the modern awards objective that the Fair Work Commission (**FWC**) must take into account when exercising its powers to make or amend awards under the FW Act. The proposed amendment would require the FWC to take into account one further factor, being:

> *"The need to provide additional remuneration for:*
>
> *(i) Employees working overtime; or*
>
> *(ii) Employees working unsocial, irregular or unpredictable hours; or*
>
> *(iii) Employees working on weekend or public holidays; or*
>
> *(iv) Employees working shifts…"*

The fast food industry strongly opposes this proposed legislative amendment and urges the Committee to recommend that the Bill not be passed.

The fast food industry is a major contributor to the national economy

The Australian fast food industry is made up of approximately 39,584 establishments and 24,734 businesses, many of which are small businesses. It employs over 300,000 employees. In 2012 – 2013, it generated $15.8 billion in revenue. McDonald's alone has an estimated economic contribution equivalent to 0.2% of Australia's gross domestic product and employs over 90,000 Australians.

The fast food industry is one of very few in which it is normal and expected for businesses to operate on all seven days a week, often 24 hours a day. These operational hours attract employees who want to work non-standard hours to cater for a variety of personal reasons, including education, family and caring needs. The industry employs a significant portion of young people, for whom fast food jobs form their first (and crucial) introduction to the workforce.

Penalty rates in the Award have substantially increased costs in the fast food industry

The *Fast Food Industry Award 2010* (**Award**) has dramatically increased costs and has a penalty regime which has no relevance to fast food operations. Prior to the introduction of the Award, the majority of the industry did not pay penalty rates at the levels set under the Award – or even at all.

Because of this substantial increase in costs, Ai Group filed an application, on behalf of fast food operators, for a review of the penalty rates in the Award as part of the Modern Awards Review 2012. This application was heavily contested between Ai Group and other employer groups, union parties and the Department of Education, Employment and Workplace Relations.

As part of its application, Ai Group engaged Deloitte Access Economics to provide a report as to the impact of penalty rates under the Award on the fast food industry.

The Deloitte Report highlighted the following impacts on respondents:

1. Decrease in hours of operation during periods when penalty rates apply

49% of franchisees

15% of non-major fast food chain operators

This feedback was reflected by the major operators

2. Increase in operators' own working hours

75% of franchisees

46% of non-major fast food chain operators

This feedback was reflected by the major operators

3. Decrease in the number of employees

65% of franchisees covered by the Award

30% of non-major fast food chain operators

This feedback was reflected by the major operators

4. Decrease in the hours offered to employees

72% of franchisees

36% of non-major fast food chain operators

This feedback was reflected by the major operators

5. Increase in labour costs

92% of franchisees

44% of non-major fast food operators (49% experiencing an increase of over 6%)

6. Adverse effect to viability of businesses

All franchisees

69% of non-major fast food operators

7. **Adverse effect to ability of businesses to grow**

95% of franchisees (of the remaining 5%, none reported that the Award had any positive impact on the potential for business growth)

68% of non-major fast food operators

The Deloitte Report also indicated that major operators anticipate that they would have to increase prices and reduce reinvestment in the industry to counteract the effects of the Award.

On 18 March 2013, the Full Bench of the FWC rejected Ai Group's application on the basis that the Modern Awards Review 2012 was narrow in scope, and there were no cogent reasons that justified a further review of penalty rates at that stage.

The amendment is a one size fits all approach to employment conditions

In rejecting the application, the Full Bench noted the opportunity for parties to bring an application to review the merits of penalty rates under the Award as part of the four yearly review in 2014. This review is intended to be much broader in scope than the 2012 review.

If the amendment in Schedule 2 of the Bill is made, this would seriously and adversely hamper the FWC's ability to assess the merits of any such application on an independent basis. It would prevent the FWC from considering whether penalty rates are appropriate in the fast food industry, from both an employer and employee perspective.

The amendment assumes that penalty rates are a necessary entitlement for all employees for work on weekends and evenings. It does not consider the unique features of each industry covered by a modern award. It will be a "one size fits all" approach to employment conditions.

The FWC is empowered by the FW Act to set a fair and relevant minimum safety net of terms and conditions in modern awards. Parliament should trust that the independent statutory tribunal will continue to exercise its considerable expertise and judgment in setting those terms and conditions. It has done so for many years, and there is no justifiable reason to depart from this process.

The amendments included in the Bill would not result in a balanced framework for cooperative and productive workplace relations, particularly for the fast food industry.

Ai Group, on behalf of its Members in the fast food industry, urges the Committee to recommend that Parliament reject the Bill.