



Luke Foley MP

NSW LABOR LEADER, LEADER OF THE OPPOSITION
Shadow Minister for Western Sydney



The Hon. Justice Iain Ross
President
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

Dear President

I write in response to the decision of the Fair Work Commission that Sunday penalty rate payments should be cut for hospitality, fast food, retail and pharmacy workers.

NSW Labor has grave concerns that this decision to reduce workers' wages will exacerbate the growing inequality in our community. It will make it harder for many people to support their families. This is particularly so for those who live in Sydney, Australia's most expensive city.

I am also very concerned that the decision will lead to an attack on Sunday rates of pay for those workers employed by NSW Government agencies. This concern has been heightened by the refusal of the NSW Government to make a commitment that such an attack is off the table. In this context, I note that the factors considered by the Full Bench in reaching its decision were not specific to the limited range of industries under consideration and could well set a precedent for a cut to the penalty rates for nurses, bus drivers, prison officers, paramedics, community, disability workers, cleaners, and other employees.

On August 30, 2016, I made a submission that the Commission should not weaken the existing framework for penalty rate payments for award covered workers. That submission was founded on the fact that these payments provided a vital safety net for low income and casual workers, enabling them to achieve a decent standard of living. Any decision that reduced their take home pay would make life significantly more difficult for those already struggling to put a roof over the heads of their family and food on the table. I opposed any changes to penalty rates not only because it would harm some of the most vulnerable workers in our community but also because it would increase the gender pay gap and harm the economy more generally.

I note the Commission has now sought additional submissions about how the decision of the Full Bench ought to be implemented. Having given the matter some thought, I believe that there is no transitional process or phase-in or period that would:

- Protect the take-home pay of all current employees who are employed either under the relevant awards or an agreement which relies on the penalty rates in the awards;
- Protect the take-home pay of all future employees covered by the relevant awards; or
- Prevent these cuts to penalty rates being used by employers in future bargaining to reduce workers' take-home pay; and which would also
- Ensure that modern awards are a guaranteed minimum safety net of take-home pay.

Instead of determining how this decision should be implemented, I invite the Full Bench to reconsider the decision altogether. I do so for four reasons:

- Implementation of the decision will reduce the take-home pay and standard of living of some of Australia's most vulnerable workers;
- The decision will widen the gender pay gap;
- The decision will harm the economy, particularly in regional areas; and
- The decision appears to fly in the face of the balance of evidence before the Full Bench.

In its decision, the Full Bench accepted that:

- Cuts to penalty rates are likely to reduce the earnings of those employees and have a negative effect on their living standards and on their capacity to meet their needs.¹
- Retail, hospitality and food services have *'the largest proportion of low paid workers in Australia'*.²
- Hospitality employees *'earn just enough to cover their weekly living expenses. Saving money is difficult. Unexpected expenses such as school trips, illness, or repairs, can produce considerable financial stress'*;³
- Fast food employees are *'more likely to reside in a lower income households [sic] and are more likely to experience financial difficulties'*;⁴ and
- Retail employees' households *'face greater difficulties in raising emergency funds [and] their financial resources are more limited'*.⁵
- A reduction in Sunday penalty rates will have an adverse impact on the earnings of [hospitality, fast food, retail, and pharmacy] employees who usually work on a Sunday.⁶
- It was *'improbable'* that there would be a compensating increase in hours available.⁷ Even if there were, people would be worker harder and longer, for less pay.
- Those are employed in the hospitality and retail sectors are more likely to be award reliant, and part-time and casual workers.⁸
- A substantial proportion of workers affected by this decision are low paid, earning less than two-thirds of median full-time wages.⁹
- Many of these employees earn just enough to cover weekly living expenses, saving money is difficult and unexpected expenses produce considerable financial distress.¹⁰
- Employees in the hospitality and retail industries were more likely to be women than in all industries¹¹
- Women constitute:
 - 57 per cent of take away food workers;¹²
 - 62 per cent of retail workers;¹³
 - 85 per cent of pharmaceutical, cosmetic and toiletry goods retailing employees;¹⁴ and
 - 57 per cent of hospitality workers.¹⁵

¹ FWC Decision para 1998

² FWC Decision para 1455

³ FWC Decision para 819

⁴ FWC Decision para 1356

⁵ FWC Decision para 1656

⁶ FWC Decision para 818, 1357, 1657 and 1827.

⁷ FWC Decision 822, 1659, 1828

⁸ FWC Decision para 743, 1464

⁹ FWC Decision para 817, 1356, 1656, 1826.

¹⁰ FWC Decision para [85]

¹¹ FWC Decision Para 743 and 1464

¹² FWC Decision Table 44, p. 280

¹³ FWC Decision Table 67, p. 339

¹⁴ FWC Decision Table 70, p. 391

In summary, the penalty rate cuts will significantly and adversely impact those workers who can least afford it and the decision will disproportionately impact women workers.

The impact of the decision on women is especially disappointing and serious. Women are more likely than men to work on Sundays, make up 57 per cent of the Sunday retail work force and 51.9 per cent of the Sunday accommodation and food services workforce.¹⁶ Almost 40 per cent of women rely on penalty rates for household expenses, compared to only just over 30 per cent of men.¹⁷ When the disproportionate number of women working part-time is taken into account, Australian women earn one third less than men.¹⁸

I note that Full Bench determined that *'a detailed assessment of the impact of a reduction in Sunday penalty rates [in the awards] on the national economy is not feasible on the basis of the limited material before us.'*¹⁹ With respect, given the serious adverse impact of the decision on so many low paid workers, it is irresponsible for the Commission to progress its decision without such an assessment.

Money earned in penalty rates is spent in businesses in suburbs and towns across the nation, generating economic activity and jobs. Cutting penalty rates will not just impact negatively on affected workers but will create a contraction in both domestic demand and consumption. This would harm the economy generally.

Modelling by the McKell Institute on the impact of penalty rate cuts for regional communities estimates that even a partial abolition across the retail and hospitality sectors would result in serious negative consequences for both workers and local regional economies. Based on an assumption of a partial cut to penalty rates resulting in a cut of \$50.93 per week per worker, workers would lose between \$89 million and \$226 million a year.²⁰ This would lead to a reduction in spending of between \$26 million to \$80 million per year across local economies.²¹ Given the estimate that the cuts to penalty rates proposed by the Commission would result in a higher weekly cut of \$77 per worker, affected workers could lose between \$135 and \$342 million per year, with a reduction in spending in regional economies of between \$39 million and \$121 million per year.

For over a century, the Fair Work Commission and its statutory predecessors have guarded fairness and equity in the workplace. The social and economic consequences of implementing a cut to penalty rates are harsh and dangerous for social cohesion and our shared economic prosperity. For these reasons, I urge the Commission to not implement its decision to cut penalty rates.

Yours sincerely



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NSW Opposition Leader

23/3/17

¹⁵ FWC Decision Table 34, p. 169

¹⁶ ABS labour force supplementary survey, Characteristics of Employment, 2015 (cat. no. 6333.0).

¹⁷ 39.3 per cent to 31.5 per cent. Australian Work and Life Index (AWALI) by the National Foundation for Australian

¹⁸ March 8, 2017, Professor Jim Stanford, accessed at

http://www.futurework.org.au/penalty_rates_and_the_gender_pay_gap

¹⁹ FWC decision, para 865, 1386, 1687

²⁰ *The Economic Impact of Penalty rate Cuts on Rural NSW*, McKell Institute, 2014, pp11-17

²¹ *The Economic Impact of Penalty rate Cuts on Rural NSW*, McKell Institute, 2014, pp 15-16