

The Shop, Distributive and Allied Employees' Association

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**NATIONAL PRESIDENT**

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Gerard Dwyer

Vice President Hatcher  
Fair Work Commission  
Level 4  
11 Exhibition Street  
MELBOURNE 3000

4 June 2018

Dear Vice President,

**Re: 4 YEARLY REVIEW OF MODERN AWARDS – GENERAL RETAIL INDUSTRY AWARD 2010  
AM 2017/43**

As previously foreshadowed the SDA's intended to file an expert report in relation to this matter.

We now enclose the expert report of Professor Borland for filing as part of the SDA's Outline of Submissions.

We will provide a copy of this correspondence and report to the other parties in this proceeding.

Yours sincerely,



GERARD DWYER

National Secretary - Treasurer

**Report by Professor Jeff Borland**

Department of Economics

University of Melbourne

## 1] Introduction

1.0 I have been engaged to prepare a written report on:

- (a) The likely effects, if any, on the cost of labour in the retail sector, in the event that the variations to the [General Retail Industry] Award proposed by the SDA are made;
- (b) The likely effects, in any, on aggregate employment in the retail sector, in the event that the variations to the Award proposed by the SDA are made; and
- (c) The views expressed by the Productivity Commission in the relevant paragraph of the PC report (at page 497).

1.1 My understanding is that the current penalty rates and proposed changes to penalty rates in the General Retail Industry Award are as described in the letter of instruction I have received. That letter is attached to this report as an Appendix.

1.2 My current position is Truby Williams Professor of Economics at the University of Melbourne. A summary of my expertise and a CV are attached to this report as an Appendix.

1.3 In preparing this report I have read and drawn on the following materials:

- Australian Bureau of Statistics (2018), Characteristics of Employment, catalogue no.6333.0.
- Australian Bureau of Statistics (2018), Labour Force Australia, Detailed, Quarterly, catalogue no.6291.0.55.003.
- Buddelmeyer, Hielke, Duncan McVicar and Mark Wooden (2013), ‘Non-standard ‘contingent’ employment and job satisfaction: A panel data analysis’, Paper presented at the 2013 HILDA Survey Research Conference.
- Cahuc, Pierre and Andre Zylberberg (2004), *Labour Economics* (MIT Press).
- Fair Work Commission (2017), Industry Profile – Retail Trade, Material to Assist AM2014/305.
- Gilfillan, Geoff (2018), ‘Characteristics and use of casual employees in Australia’, Commonwealth Parliamentary Library, Research Paper, 18 January.
- Lass, Inga and Mark Wooden (2017), ‘Measurement, prevalence and the socio-demographic structure of non-standard employment: The Australian case’, mimeo.
- Manning, Alan (2016), ‘The elusive employment effect of the minimum wage’, Centre for Economic Performance, London School of Economics and Political Science, Discussion Paper no.1428.
- Productivity Commission (2017), *Workplace Relations Framework: Volume 1, Final Report*, Canberra.
- Productivity Commission (2015), *Workplace Relations Framework, Draft Report*, Canberra.

- 1.4 The rest of my report consists of three sections. Section 2 describes my opinion on the impact of the proposed changes to penalty rates on the cost of labour in the retail industry. Section 3 presents my opinion on the likely impact of the proposed changes to penalty rates on total employment in the retail industry. In Section 4 I evaluate the issue raised by the Productivity Commission regarding the potential impact of the proposed changes to penalty rates on casual employment in the retail industry.

*Summary of Main Conclusions*

- 1.5 A summary of the main conclusions in my report is as follows:
- (a) I estimate that the maximum potential impact of the proposed changes to penalty rates for casual employees on the weekly total cost of labour would be relatively small. For example, for strip shopping type retail establishments I estimate a maximum impact of 0.9 to 1.6 percent; and for large supermarkets and convenience stores I estimate a maximum impact of 2.3 to 3.9 percent. In the report I explain why I regard these impacts as the maximum possible;
  - (b) In my opinion, even using the estimates I have made of the maximum impact of the proposed changes to penalty rates on the weekly total cost of labour, any impact on total employment (that is, total hours of work) will be small. First, the size of any change in total employment due to other inputs being substituted for casual employees is likely to be small. This is because the main substitution of casual employees would be by permanent employees, which leaves total employment unchanged. Second, the likely size of any effect on total employment due to the scale effect (via a decrease in output) will be minimal. This is because the impact of the proposed changes to penalty rates on prices is likely to be very small.
  - (c) In the paragraph in the Productivity Commission report to which I have been referred: (i) In my opinion the Productivity Commission is correct to assert a correlation between casual jobs and young and disadvantaged workers, but it is not correct to state that proposed changes to penalty rates for casual employees could therefore have ‘unfortunate’ consequences for those individuals. This is because in my opinion the likely impact on casual employment of the proposed changes to penalty rates will be small; and even if there are effects on casual employment there will not be a major impact on the capacity for young and disadvantaged individuals to obtain employment; and (ii) In my opinion the Productivity Commission is not correct to state that proposed changes to penalty rates could have ‘unfortunate’ consequences for workers needing flexible work arrangements. This is because there is not strong evidence that casual employment is disproportionately important for providing jobs with flexible arrangements.

## 2] The impact of the proposed changes to penalty rates on the cost of labour in the retail industry

- 2.0 In this section I present estimates of the maximum possible impact of the proposed changes to penalty rates on the weekly total cost of labour for different types of employers in the retail industry. I use the term ‘estimates’ because the calculations I present depend on assumptions that I will describe.
- 2.1 Defining a maximum possible impact on the weekly total cost of labour allows an assessment to be made of the maximum possible impact of the proposed changes to penalty rates on total employment in the retail industry. This is because the size of any change in employment due to the proposed changes to penalty rates will depend on: (i) The size of the change in labour costs due to the changes to penalty rates; and (ii) The elasticity of employment with respect to changes in the cost of labour.
- 2.2 To present my estimates of the maximum possible impact of the proposed changes to penalty rates on the weekly total cost of labour to an employer, I do the following. First, I present the intuition for the measure I will use. Second, I present a simple example to illustrate how I will do the calculation. Third, I present the general formula I will apply. Fourth, I discuss the scenarios and assumptions used for making my estimates. Fifth, I present my estimates.

### *Intuition for measure*

- 2.3 The impact of the proposed changes to penalty rates on the weekly total cost of labour for an employer will depend on:
- (i) The share of total weekly hours that are worked on those days/times of day for which penalty rates apply;
  - (ii) The share of hours worked for which penalty rates apply that are worked by casual employees; and
  - (iii) The percentage change in the cost of hiring an hour of labour from a casual employee during times to which penalty rates apply that will occur due to the proposed changes to penalty rates (with the change expressed as a proportion of the current cost of labour).
- 2.4 Regarding component (i), a higher share of total weekly hours accounted for by hours for which penalty rates will be changed, implies a larger impact on the weekly total cost of labour. Regarding component (ii), given that the proposed changes to penalty rates involve only casual employees, a higher share of the hours to which penalty rates apply that are worked by casual employees, implies a larger impact on the weekly total cost of labour. Regarding component (iii), a larger size of proposed change to penalty rates will imply a larger impact on the weekly total cost of labour.

*Example*

- 2.5 Suppose that a business operates for two days each week. The table below shows the assumptions I have made about components (i) to (iii) (described above) for day 1 and day 2 for the purposes of this example. In the example I assume that there is a proposed change to penalty rates on day 1 which increases the cost of an hour of labour from a casual employee by 20 percent, and no proposed change to penalty rates on day 2.
- 2.6 To calculate the impact on the total cost of labour I follow two steps. First, for each day I multiply together the share of total weekly hours accounted for by the hours worked on that day to which penalty rates apply, the share of those hours that are worked by casual employees, and the percentage change in the cost of hiring labour due to the proposed change in penalty rates. Second, I add together the amounts calculated for each day in the first step to obtain the percentage change in the weekly total cost of labour to the employer. More precisely, the measure that is obtained is a weighted average percentage change in the weekly total cost of labour, where the weights are the shares of total weekly hours worked by casual employees at hours for which penalty rates apply.

Component	Day 1	Day 2
(i) Share of total weekly hours worked accounted for by hours to which penalty rates apply	0.25	0.5
(ii) Share of hours to which penalty rates apply which are worked by casual labour	0.5	0.5
(iii) Percentage change in cost of hiring an hour of labour due to proposed change in penalty rates for casual employees	0.2	0

**Table 1: Assumptions for numerical example**

- 2.7 For this example, following the two steps described above gives:  
 Percentage change in weekly total cost of labour =  $(0.25) \times (0.5) \times (0.2) + (0.5) \times (0.5) \times (0) = 0.025$ .

That is, the proposal to increase penalty rates on Day 1 which results in a 20 percent increase in the cost of hiring an hour of labour, would cause a 2.5% increase in weekly total labour costs.

*General formula for estimating maximum impact on total cost of labour*

- 2.8 It is possible to give a general formula that can be used to calculate the impact of proposed changes to penalty rates on the weekly total cost of labour to an employer for a seven day week:

$$\text{Change in weekly total cost of labour} = \sum_{i=1}^7 \alpha_i \gamma_i \Delta w_i$$

Where:

$\alpha_i$  = Share of total weekly hours worked accounted for by hours to which penalty rates apply on day i;

$\gamma_i$  = Share of hours to which penalty rates apply on day i that are worked by casual employees; and

$\Delta w_i$  = Percentage change in cost of hiring an hour of labour from a casual employee during the hours to which penalty rates apply on day i due to proposed changes to penalty rates.

- 2.9 I identify the impact estimated using this formula as the ‘maximum possible’ impact on the weekly total cost of labour due to the proposed changes in penalty rates for several reasons and in the following ways:
- 2.10 First, I will apply the formula assuming that changes in penalty rates do not cause any change in: (i) Total employment of permanent and casual employees; and (ii) Shares of total weekly hours worked by casual employees at hours for which penalty rates apply. That is, I am asking: What would be the addition to the total cost of labour for an employer to retain its current arrangements for hiring labour after the proposed changes to penalty rates?
- 2.11 Second, I will apply the formula assuming that all casual employees in the retail industry will receive an increase in their penalty rates on weekday evenings and Saturdays if the proposed changes are implemented. Hence, I do not take account of the possibility that some employers are already paying penalty rates for casual workers that are above the award level. For example, data from Australian Bureau of Statistics Employee Earnings and Hours Survey for May 2016 (reproduced in Fair Work Commission, 2017, p.52) show that only 34.5 percent of workers in the retail industry had ‘Award only’ as their method of pay setting. If that proportion was representative of award coverage for casual employees in the retail industry, and if the proposed changes to penalty rates only affected the wages of casual employees covered by awards, it would imply that all the estimates of changes to the weekly total cost of labour I will present would need to be divided by a factor of three.
- 2.12 The reason I have not sought to make this adjustment in applying the formula is due to a lack of precise information about what proportion of casual workers in the retail industry are covered by awards, and about the impact that the proposed changes to

penalty rates would have on wages paid to casual employees whose method of pay setting was by collective agreement or individual arrangement. Nevertheless, the general point is that, to the extent that the proposed changes to penalty rates do not affect the wages paid to all casual employees, my estimates over-state the impact on weekly total labour costs.

- 2.13 Third, I will apply the formula assuming that all casual employees in the retail industry are adults. That is, I will assume that all casual employees would receive increases in penalty rates that are expressed as a percentage of the adult ordinary time wage. However, junior casual employees would only receive increases in penalty rates expressed as a percentage of the junior ordinary time wage that they are paid. Hence, by making this assumption that all employees are adults, wherever some employees who would benefit from the proposed changes to penalty rates are juniors, my estimates will be over-state the percentage increase in weekly total labour costs to employers. To illustrate the difference this might make to my estimates, data from the Australian Bureau of Statistics Labour Force Survey for February 2018 show that 188,000 (or 14.2 percent) out of 1,322,300 persons employed in retail industry in Australia were aged 15 to 19 years (ABS, Labour Force Australia, Detailed, Quarterly, EQ12, catalogue no.6291.0.55.003).
- 2.14 I have not sought to make adjustment for juniors in making my estimates due to a lack of information on the proportions of casual junior employees receiving each level of junior rates. Nevertheless, the general point is that, to the extent that the proposed changes to penalty rates partly apply to junior casual employees, my estimates over-state the impact on weekly total labour costs.
- 2.15 Fourth, the approach I use does not take into account that there may be offsetting effects on the cost of labour when penalty rates increase (for example, due to lower rates of employee turnover – see Manning, 2016).

*Scenarios for estimating the maximum impact on the weekly total cost of labour*

- 2.16 I have taken the scenarios for estimating the maximum impact on the weekly total cost of labour from the description of characteristic trading patterns in the letter of instruction I have received:
- (a) Supermarket A and Convenience stores
    - (i) Weeknight evenings: Monday to Friday, 6pm to 11pm
    - (ii) Saturdays: 7am to 11pm
  - (b) Supermarket B
    - (i) Weeknight evenings: Monday to Friday, 6pm to 9pm
    - (ii) Saturdays, 8am to 6pm



- (c) CBD and Shopping centres
  - (i) Weeknight evenings: One night, 6pm to 9pm
  - (ii) Saturdays: 9am to 5pm
  
- (d) Strip Shopping
  - (i) Weeknight evenings: Nil
  - (ii) Saturdays: 9am to 5pm

*Assumptions for estimating the maximum impact on weekly total cost of labour*

- 2.17 To estimate the maximum impact on the weekly total cost of labour, I need to make assumptions on each of the three components of the general formula. I do this as follows:
- 2.18 Share of total weekly hours worked accounted for by hours to which penalty rates apply on each day:
- 2.19 I am not aware of publicly available aggregate-level information for the retail industry on the share of total weekly hours accounted for by hours to which penalty rates apply on each day. It does seem reasonable, however, to assume that the share will vary between retail businesses with different opening hours. Hence, I use the descriptions of the four characteristic trading patterns from the letter of instruction. In addition to the information provided on the four scenarios in my letter of instruction, I assume with regard to opening hours that: (a) Supermarket A and Convenience stores would be open on weekdays from 7am to 6pm and on Sundays from 7am to 11pm; (b) Supermarket B would be open on weekdays from 8am to 6pm and on Sundays from 8am to 6pm; (c) CBD and Shopping centres would be open on weekdays from 9am to 6pm and on Sundays from 9am to 5pm; and (d) Strip shopping would be open from 9am to 5pm on weekdays and not open on Sundays.
- 2.20 Using the four scenarios for trading patterns I make the assumptions on the shares of total weekly hours worked accounted for by hours to which penalty rates apply that are shown in Table 2.

Scenario	Shares of total weekly hours	
	Weeknights	Saturday
(a)	0.2	0.2
(b)	0.2	0.2
(c)	0.1	0.2
(d)	0	0.25

**Table 2: Assumptions on shares of total weekly hours accounted for by hours to which penalty rates apply**

- 2.21 Share of hours to which penalty rates apply on each day that are worked by casual employees:
- 2.22 I am not aware of publicly available aggregate-level information for the retail industry on the share of hours to which penalty rates apply that are worked by casual employees. Hence, for purpose of making my estimate of the maximum possible impact on the weekly total cost of labour, I choose what I regard as reasonable upper and lower estimates for this share.
- 2.23 As a lower estimate I choose the proportion of casual employees in total employment in the retail industry. That proportion was 36 percent in August 2017 (ABS, 2018, Characteristics of Employment, Tablebuilder). It is a lower estimate on the assumption that employers are more likely to use casual employees to work at times where penalty rates apply (especially at those times where the differential penalty rates currently apply). However, it is likely to be a conservative lower estimate as the share of hours worked by casual employees will be less than their share in total employment. For example, in August 2017 only 14.9 percent of casual employees in the retail industry were working full-time compared to 65.5 percent of permanent employees (ABS, 2018, Characteristics of Employment, Tablebuilder).
- 2.24 As an upper estimate I choose 60 percent. This is roughly equal to the proportion of employees in Australia who worked only on weekends or who worked on weekdays and weekends who were casual employees (36.4 percent: ABS, 2018, Characteristics of Employment, Table 7.3), scaled up by the ratio of the share of casual employees in the retail industry to the share in total employment in Australia in August 2017 ( $1.43 = 35.9/25.1$ ; ABS, 2018, Characteristics of Employment Survey, Tablebuilder). The basis for using this as an upper estimate is that penalty rates must be paid to all workers who were working at these times for at least some of the hours which they work.
- 2.25 These lower and upper estimates are intended to describe the average experience of employers in the retail industry. Of course, for individual employers these proportions may be smaller or larger than the estimates.
- 2.26 Percentage change in cost of hiring an hour of labour from a casual employee during hours to which penalty rates apply on each day due to the proposed change in penalty rates:
- 2.27 On weekday evenings it is proposed that penalty rates be increased for casual employees from zero to 25 percent. This constitutes a 20 percent increase in the cost of an hour of labour for a casual employee on a weekday evening. This is calculated as:  $\text{Proposed increase in penalty rate} / \text{Current cost of labour} = 25/125$ . The denominator is set equal to 125 to represent the base cost of labour (100) plus the casual loading (25).

2.28 On Saturdays it is proposed that penalty rates be increased for casual employees from 10 percent to 25 percent for hours worked from 7am to 6pm. This constitutes a 11.1 percent increase in the cost of an hour of labour for a casual employee on Saturday from 7am to 6pm. This is calculated as: Proposed increase in penalty rate/Current cost of labour = 15/135. The denominator is set equal to 135 to represent the base cost of labour (100) plus the casual loading (25) plus the current penalty rate (10). This increase of 11.1 percent is the relevant increase in labour costs on Saturday for scenarios (b) to (d), because all these types of establishments would not be open after 6pm. For scenario (a) it is also relevant to take into account that it is proposed there would be an increase in the penalty rate for hours worked from 6pm to 11pm from zero to 25 percent. This constitutes a 20 percent increase in the cost of an hour of labour for a casual employee on Saturday from 6pm to 11pm. To arrive at an average increase in the cost of an hour of labour for a casual employee on Saturday for scenario (a) I assume that 75 percent of hours worked by casual employees in the retail industry on Saturday are from 7am to 6pm and 25 percent of hours worked are from 6pm to 11pm. This gives for scenario (a) an average increase in the cost of an hour of labour for a casual employee on Saturday of 13.3 percent.

*Estimate of the maximum impact on the total cost of labour*

2.29 In Table 3 I present the estimates of the maximum impact of the proposed changes to penalty rates on the weekly total cost of labour. I derive these estimates for each of scenarios (a) to (d) by applying the general formula and the assumptions on the values of components (i) to (iii) of that formula that I have described above. For example, to calculate the lower estimate for scenario (a) I take:  $(0.2) \times (0.36) \times (0.2) + (0.2) \times (0.36) \times (0.133) = 0.023$ . This implies an increase in total labour costs equal to 2.3 percentage points. Scenarios (a) to (d) are the four scenarios presented in my letter of instruction. The lower and upper estimates are derived respectively assuming that the share of penalty rate hours worked by casual employees are 0.36 and 0.6.

Scenario	Lower estimate (%)	Upper estimate (%)
(a)	2.3	3.9
(b)	2.2	3.7
(c)	1.5	2.5
(d)	0.9	1.6

**Table 3: Lower and upper estimates of maximum impact on weekly total cost of labour**

### 3] Impact of changes to penalty rates on total employment in the retail industry

#### *Introduction*

3.0 The effect on employment due to a change in the cost of labour can be interpreted to be composed of two parts: a substitution effect and a scale effect (for example, Cahuc and Zylberberg, 2004, p.176). The definition of the substitution effect and scale effect for the case of the proposed increases to penalty rates under the General Retail Industry Award would be as follows:

- (a) The substitution effect is the change in the total hours worked by paid labour (both casual and permanent employees) that happens because the increase in the penalty rate for casual employees causes a change in the relative cost of employing that input compared to other inputs. It is calculated assuming that the quantity of output remains constant at the same level as prior to a change being made in penalty rates.
- (b) The scale effect is the change in the total hours worked by paid labour due to a change in the level of output following the increase in the penalty rate for casual employees. An example of the scale effect is that a firm may pass on some part of an increase in labour costs to its consumers through higher prices, which causes a decrease in demand for the firm's product. Adjustment to the amount of paid labour input might occur by existing firms changing their employment (for example, in the retail sector this might involve having less staff in the store at any time or reducing opening hours), or by changes in the rate of exit from the industry by existing firms or in the rate of entry by new firms.

3.1 In the rest of this section I present my opinion on the likely sizes of the substitution effect and the scale effect, and conclude with a summary of the likely overall effect on total employment. I use the term total employment to refer to the total hours worked by employees.

3.2 Note that my concern in this section is with the effect of the proposed changes to penalty rates on total employment in the retail industry. This analysis will include consideration of the specific impact on casual employees, but that is not the focus of the analysis.

#### *Substitution effect*

3.3 The proposed changes to penalty rates would affect the cost of employing casual labour at those times and days at which the higher rates would apply. Other inputs for which casual labour could be substituted are permanent labour, capital and unpaid labour. To the extent that casual labour is substituted for permanent labour there is no

change in total employment. However, if casual labour is instead substituted for by capital or unpaid labour, total employment will be decreased.

- 3.4 The size of the substitution effect depends on:
- (a) The extent of change in the relative costs of inputs due to the increase in penalty rates for casual employees. This determines the financial incentive for a firm to alter its inputs. Other things equal, the larger the increase in the relative cost of an input, the greater the financial saving a firm can make by switching to an alternative input; and
  - (b) The technological scope for substitution. This is the technical feasibility of replacing one input with another input. For example, capital equipment might be able to be substituted for labour in doing some check-out roles at a supermarket, but be much less able to replace labour that is used to pack shelves or fruit and meat sections of the store.

*Substitution of casual employees by capital*

- 3.5 The relevant information for a firm to decide whether to substitute capital for labour is the impact of changes to penalty rates on its total cost of labour across a week. This is because new capital is applied for all hours of operation of business, not just when penalty rates apply.
- 3.6 The estimates I have made of the maximum impact on the weekly total cost of labour suggest strongly that the increase in labour costs measured in this way is relatively small (see section 2 above). Hence there is likely to be little extra incentive for using new capital to substitute for labour caused by the proposed changes to penalty rates, especially when account is taken of installation and adjustment costs. Furthermore, the technological scope for substitution of some activities undertaken by casual employees in the retail industry is likely to be limited.

*Substitution of casual employees by unpaid labour*

- 3.7 Small firms could substitute extra labour by the owner for the labour time of casual employees. But the scope to do this appears limited. Labour of owners plus unpaid labour from family members has been estimated to account for 10.6 of labour time in the retail industry; which led the Productivity Commission (2015, p.492) to conclude of the scope for this type of labour to substitute for employees being paid penalty rates: ‘...there is a limit to the role they can play.’
- 3.8 Another possibility is that an owner could switch their own work hours and those of casual labour between penalty rate and non-penalty rate hours to avoid the increased cost of paying higher penalty rates for casual employees. Note, however, that this type of switching would leave total employment in the retail industry unchanged.

*Substitution of casual employees by permanent employees*

- 3.9 The technological scope for substitution of casual employees is greatest for permanent employees. This is because permanent employees can perform exactly the same roles and activities as casual employees. Given limits on the scope and incentives for substituting with other inputs such as capital, this is likely to be the main option considered by firms due to the proposed increases in penalty rates for casual employees.
- 3.10 I consider substitution between casual employees and permanent employees under two scenarios. First, I consider the case of firms which currently hire only casual employees. Second, I consider firms which currently hire a mix of casual and permanent employees. (There is also a third possible scenario: firms which currently hire only permanent employees. But given that the cost of employing casual employees relative to permanent employees will increase with the proposed change to penalty rates, I would not expect any substitution in this case.)
- 3.11 I assume that the cost of hiring labour for a specified number of hours each week consists of the costs of wages and leave provisions, which I denote  $C_w$  for casual employees and  $P_w$  for permanent employees, and other labour costs which I denote  $C_o$  and  $P_o$  respectively for casual and permanent employees. I assume that the 25 percent casual loading involves exactly the same cost to an employer as providing the required leave provisions for a permanent employee. Hence the only reason that  $C_w$  and  $P_w$  would differ for an employee covered by the General Retail Industry Award would be due to differences in penalty rates on weekday evenings and Saturdays. Other costs could consist of costs associated with employee turnover (such as hiring or training costs) or with the capacity for an employer to adjust their labour input. For the purposes of this analysis of the substitution effect, I assume that the minimum number of hours of labour that can be hired from an employee by an employer is three hours (on the same day).
- 3.12 The first scenario I consider is where an employer currently hires only casual employees. For a profit maximising firm, hiring only casual workers indicates that the cost of hiring the marginal (final) three hours of labour is strictly lower when a casual employee is hired than when a permanent employee is hired. This implies that for the marginal three hours of labour hired:
- $$C_w + C_o < P_w + P_o.$$
- 3.13 The proposed changes to penalty rates will increase penalty rates for casual employees on weekdays and Saturday to be same as for permanent employees. That is, prior to the proposed change in penalty rates  $C_w < P_w$  (on weekday evenings and Saturdays); and after the proposed change in penalty rates  $C_w = P_w$ .
- 3.14 Two possible outcomes can therefore occur. First, where other labour costs associated with hiring casual employees are lower than for hiring permanent employees ( $C_o < P_o$ ) it follows that, even after the proposed changes to penalty rates

for casual employees, it would still be the case that  $C_w + C_o < P_w + P_o$ . In this case the employer would continue to hire only casual employees. Second, where other labour costs associated with hiring casual employees are higher than for hiring permanent employees ( $C_o > P_o$ ), after the proposed changes to penalty rates, the cost of hiring the marginal hours from a casual employee will be higher than hiring a permanent employee. Hence, the employer would have an incentive to substitute some hours from casual employees by permanent employees. For a profit-maximising firm this would happen up to the point where the cost of hiring the marginal three hours of labour was the same whether a casual employee or permanent employee was hired for those hours.

3.15 Another way of describing these outcomes is as follows. Where employers base their hiring decision simply on wage costs, there would be no incentive to substitute permanent employees for casual employees following the proposed changes to penalty rates. Where there are other factors that affect the relative cost of hiring casual and permanent employees which favour permanent employees, it is possible that there may be substitution towards permanent employees.

3.16 The second scenario I consider is where an employer currently hires both casual and permanent employees. The theory of the profit maximising firm requires that for this to occur it must be that the cost of hiring the marginal (final) three hours of labour is the same whether a casual employee or a permanent employee is hired (see for example, Cahuc and Zylberberg, 2004, p.178). This implies that for the marginal three hours of labour hired:

$$C_w + C_o = P_w + P_o.$$

3.17 In this situation, an increase in penalty rates for casual employees will cause  $C_w$  to rise relative to  $P_w$ , and hence for the marginal three hours of labour hired, now  $C_w + C_o > P_w + P_o$ . Therefore, there will be an incentive for the employer to adjust towards permanent employees and away from casual employees until equality is restored between the cost of hiring the marginal three hours of labour from a casual or permanent employee.

3.18 These scenarios suggest that the proposed changes to penalty rates are likely to cause some modest substitution of permanent employees for casual employees. What is critical, however, is that this substitution would not be associated with any change in total employment. It is important to reiterate this point. The substitution effect identifies the impact on employment due to a change in the relative price of an input, keeping constant the quantity of output produced. In order to keep the quantity of output constant, where productivity of casual employees and permanent employees is equal, reducing labour input by a casual employee by an hour would require an increase in labour input by permanent employee of equal size. Hence, substitution of casual employees by permanent employees will not change total employment.

### *Conclusion*

3.19 In my opinion, there is likely to be little incentive or scope for substitution of casual employees by capital or unpaid labour. There will be more incentive for and feasibility of substitution of casual employees by permanent employees, so that modest substitution of this type is likely to occur. However, where substitution is between casual employees and permanent employees, there is no impact on total employment. Hence, the overall impact of the substitution effect on total employment will be minimal.

### *Scale effect*

3.20 The size of the scale effect depends on:

- (a) The extent to which penalty rates affect the price of output; and
- (b) How demand for output responds to any increase in price (and how that change in turn affects decisions by firms on whether to operate, on opening hours, and on employment when open).

3.21 Suppose that the proposed increases in penalty rates for casual employees increase the weekly total cost of labour for different types of employers in the retail industry by the estimated amounts shown in Table 3. How this increase in the cost of labour impacts on an employer's total costs depends on the share of labour in total costs. The Fair Work Commission research report on the retail sector (2017, p.20) indicates that the share of labour costs in total costs in the retail industry is about 11 percent. Hence, even using the highest maximum estimates of the effect of the proposed changes to penalty rates on the cost of labour (for scenario (a)), the effect will be to increase total costs by on average 0.25 to 0.43 percent. As well, in an imperfectly competitive market, not all this increase would be passed on to consumers by a profit-maximising firm. Hence, I conclude that the proposed changes to penalty rates will have a very small impact on prices and on the demand for output, and hence any impact on total employment from the scale effect will be minimal.

### *Overall impact on total employment in the retail industry*

3.22 In my opinion:

- (a) The likely size of any change in total employment due to a substitution effect will be small. This is because the main type of substitution that will occur is of casual employees for permanent employees, which will leave total employment unchanged. Little substitution of casual employees for other inputs is likely to occur.



- (b) The likely size of any scale effect on total employment will be minimal. This is because the impact of the proposed changes to penalty rates on prices is likely to be very small.
- (c) It follows from (a) and (b) that, even using my estimates of the maximum impact of the proposed changes to penalty rates on the weekly total cost of labour, any impact on total employment will be small. It is also important to bear in mind the reasons I have set out earlier in my report as to why the actual impact on the weekly total cost of labour is likely to be less than my estimates of the maximum impact (and perhaps substantially less).

#### **4] Productivity Commission commentary on potential impact of changes to penalty rates**

- 4.0 I have been directed to the following paragraph in the report of the Productivity Commission (2015, p. 497): ‘However, a major proviso is that the current regulated pay levels set for casual employees are ‘rough and ready’ and may not take into account the general lower average skills and experience of those employees. Were this to be true, achieving parity in the employer costs of employing casuals compared with permanent employees might only have the appearance of ‘equal pay for equal work’ and would disadvantage employment of casuals. That would be unfortunate given that casual jobs are an important vehicle for gaining entry to the labour market for the disadvantaged, the young, and those needing flexible working arrangements.’
- 4.1 In this paragraph I interpret the Productivity Commission to be saying:
- (a) It is possible that a change in penalty rates of the type being proposed would decrease casual employment; and
  - (b) If that was to occur it could have an adverse effect on the capacity to gain entry to the labour market for young and disadvantaged jobseekers and jobseekers needing flexible work arrangements.
- 4.2 I have already addressed the first of these points in section 3 of this report. In this section I provide my opinion on the second point. I do this in two sub-sections: the first relating to young and disadvantaged jobseekers; and the second relating to workers needing flexible working arrangements.

#### *Young and disadvantaged jobseekers*

- 4.3 Available evidence on casual employment in Australia does show that a disproportionate share is accounted for by workers who are younger, less educated and who have spent more time unemployed in the previous 12 months. For example, Lass and Wooden (2017, Table 3) present data from the HILDA survey for 2015 which shows: (i) 23.2 percent of casual employees are aged 15-19 years compared to 6.1 percent for the whole workforce; and (ii) 23.3 percent of casual employees had

been unemployed in the past 12 months compared to 8.8 percent for the whole workforce.

- 4.4 At the same time, it is important not to exaggerate the extent to which casual employment is focused on young and disadvantaged workers. A first point is that many of the younger workers holding casual jobs are full-time students. Lass and Wooden (2017, Table 3) show that 32.3 percent of casual employees are full-time students compared to 9.1 percent of the whole workforce. A second point is that other workers apart from the young hold casual jobs. For example, Lass and Wooden (2017, Table 3) show that about one-third of casual employees are aged 35 years plus.
- 4.5 Analysis of longitudinal data on the labour market transitions of individuals who are unemployed or out of the labour force does indicate that casual employment is a major entry point to employment for that group. For example, Lass and Wooden (2017, Table 4) present average data on year-to-year transitions for individuals in the HILDA Survey for all year pairs from 2001 to 2015 (that is, 2001-02, 2002-03, and so on). They show that for individuals who were unemployed or out of the labour force at a survey date and employed at the next survey date, casual employment was the main type of job obtained.
- 4.6 The Productivity Commission is therefore correct to assert a correlation between casual jobs and young and disadvantaged individuals. However, in my opinion the Productivity Commission is not correct to state that proposed changes to penalty rates could therefore have ‘unfortunate’ consequences for those individuals. Below I present the reasons for my opinion.
- 4.7 First, in my opinion that any decrease in casual employment in the retail industry due to the proposed changes to penalty rates will be small. This is what I have described in the analysis of the impact on total employment in the retail industry in section 3.
- 4.8 Second, to the extent that the share of casual jobs in the retail industry does decrease, in my opinion this would not have a major impact on opportunities for young and disadvantaged workers to obtain employment:
- (a) The retail industry only accounts for 15.5 percent of casual jobs (ABS, 2018, Characteristics of Employment, Tablebuilder). Hence, any small change in the share of casual jobs in the retail industry will not have a significant impact on the scope for workers to enter the labour market via casual employment;
  - (b) Other paths into employment in the retail industry and in other industries exist for young and disadvantaged workers. For example, the analysis by Lass and Wooden, (2017) using HILDA data for 2001 to 2015 shows that on average about 47 percent of individuals who were unemployed at a survey date and employed at the survey date a year later had moved into casual employment. Therefore, about 53 percent who moved into employment from unemployment did so through obtaining other types of jobs; for example, about 25 percent

obtained full-time permanent work. Similarly, about 47 percent of individuals who were out of the labour force at a survey date and employed at the survey date a year later had moved into casual employment, with about 53 percent moving into other types of jobs; and

- (c) The existence of junior rates in the General Retail Industry Award will still provide an incentive for hiring of young employees.

4.9 Third, to suggest that a decrease in the share of casual employment in the retail industry could have unfortunate consequences involves an implicit assumption: that there is a causal relation from the availability of casual jobs to young and disadvantaged workers obtaining employment. However, in the absence of evidence of that direction of causality, it is also necessary to take seriously the possibility that causality is in the opposite direction. New entrants to the labour market, especially where they are young and disadvantaged, may have lower bargaining power than other workers, and hence could be more likely to be able to be made to take types of work that they regard as less advantageous, such as casual employment.

4.10 Fourth, in my opinion, any judgement about the consequences of a decrease in the share of casual employment in the retail industry should also take into account other outcomes associated with casual employment:

- (a) Casual employees experience lower levels of job satisfaction than other employees. For example, analysis of HILDA 2015 data by Gilfillan (2018, Table 8) shows that casual employees have lower levels of overall job satisfaction than other employees. Buddelmeyer et al. (2013) undertake a panel regression analysis using HILDA data from 2001 to 2011 and find that male casual employees are less likely to express very high levels of job satisfaction and more likely to express very low levels of job satisfaction;
- (b) Casual employees are more likely to be underemployed than other employees. The analysis of HILDA 2015 data by Gilfillan (2018, Table 9) finds that 36 percent of casual part-time employees are under-employed compared to 20 percent for permanent employees; and
- (c) The likelihood of moving out of employment to being unemployed or out of the labour force is higher in casual jobs than other types of employment, and the scope to transition to permanent employment is lower for casual employees than from other types of employment. For example, Lass and Wooden (2017, Table 4) show using HILDA data for 2001 to 2015 that: (i) 14 percent of individuals who were in casual employment at a survey date were unemployed or out of the labour force at the survey date a year later, compared for example to 7.3 percent of permanent part-time workers; and (ii) 19.3 percent of individuals who were in casual employment at a survey date were in permanent employment at the survey date a year later, compared to 45.1

percent and 35.3 percent of workers who had respectively been on fixed term contracts or doing temporary agency work at the initial survey date.

*Workers who need flexible work arrangements*

- 4.11 In my opinion the Productivity Commission is not correct to state that proposed changes to penalty rates could have ‘unfortunate’ consequences for workers needing flexible work arrangements. First, there is not strong evidence that casual employment is disproportionately important for providing jobs with flexible arrangements. For example, data for August 2017 from the Australian Bureau of Statistics (2018, Characteristics of Employment, Table 7.3) show that 30.9 percent of permanent employees have an agreement with their employer to work flexible hours compared to 30.2 percent for casual employees. Second, even if casual jobs were correlated with flexible work arrangements, the same points as I have made above relating to young and disadvantaged individuals would apply.

I have made all the inquiries that I believe are desirable and appropriate (save for any matters identified explicitly in my report) and that no matters of significance that I regard as relevant have, to my knowledge, been withheld from the Commission.



**Jeff Borland**

June 1, 2018

## CURRICULUM VITAE

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### **Summary of expertise:**

Over my career I have completed many research projects on the operation of labour markets in Australia including on topics relating to wage determination; earnings inequality; employment and unemployment; labour market programs; and trade unions. I have a wide knowledge of the main theoretical approaches in labour economics and of the empirical methodologies applied – for example, micro-econometric analysis, program evaluation, and simulation modelling.

My research on labour markets has been published in leading international and Australian journals including *Industrial and Labor Relations Review*, the *British Journal of Industrial Relations*, *Labour Economics*, and the *Economic Record*. I was invited to prepare the review paper on the Australian labour market for the Reserve Bank's 2011 decadal review of the Australian economy, and invited to prepare the review chapter on 'Labour market and industrial relations' for the Cambridge Handbook of the Social Sciences in Australia in 2003. Currently I publish a monthly 'Snapshot' on the Australian labour market at: <https://sites.google.com/site/borlandjum/labour-market-snapshots>

### **Main Academic Positions:**

2015-: Truby Williams Professor, Department of Economics, University of Melbourne.  
2001-2014: Professor, Department of Economics, University of Melbourne.  
1999 - 2001: Associate Professor, Department of Economics, University of Melbourne.  
1996 - 1998: Senior Fellow, Centre for Economic Policy Research, RSSS, Australian National University.  
1992 - 1995: Senior Lecturer, Department of Economics, University of Melbourne.  
1988 - 1991: Lecturer, Department of Economics, University of Melbourne.

**Visiting Academic Positions:**

2010: Visiting Professor of Australian Studies, Department of Economics, Harvard University.

2001-: Adjunct Professor, Melbourne Institute, University of Melbourne.

1995, 1997-2001: Adjunct Faculty, Australian Graduate School of Management, University of NSW.

1992: Visiting Assistant Professor, Department of Economics, University of Wisconsin-Madison.

1990: Visiting Assistant Professor, Department of Economics, University of Iowa.

**Education:**

1984 - 1988: Ph.D in Economics - Yale University.

1983 - 1984: M.A. (Hons.) in Economics - University of Melbourne.

1979 - 1982: B.A. (Hons.) in Economics and History - University of Melbourne.

**Teaching Experience:**

Microeconomic Theory (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> year); Game Theory and Information Economics (4<sup>th</sup> year and graduate); Contracts and Organisations (graduate) Labour Economics (3<sup>rd</sup> year); Business Applications of Economics (3<sup>rd</sup> year); Australian Economic History (2<sup>nd</sup> year); World Economic History (1<sup>st</sup> year, 2<sup>nd</sup> year, graduate); Sports Economics (2<sup>nd</sup> year); Economic Design (4<sup>th</sup> year/graduate); Using Evidence (graduate)

**Main University administrative roles:**

2008-09: Deputy Dean, Faculty of Economics and Commerce.

2003-06: Head of Department of Economics, University of Melbourne.

2006-07: Chair, University Academic/Undergraduate Programs Committee.

2005: Chair, University Library Committee.

2003-05: Chair, University Publications Committee.

1993-1995: Deputy Head of Department of Economics, University of Melbourne.

**Awards:**

- 2016 - University of Melbourne, Faculty of Business and Economics, Ross Williams Award for Career Achievement in Teaching.
- 2015 - University of Melbourne, Faculty of Business and Economics, Annual Alumni of Distinction Award for Contribution to the Faculty or University.
- 2013 - Economic Society of Australia - Prize for Best Paper in Economic Record.
- 2007 – Carrick Foundation – Citation for Outstanding Contribution to Student Learning.
- 2006 – University of Melbourne: Ed Brown Award for Teaching.
- 2005 – University of Melbourne, Faculty of Economics and Commerce: Dean's Individual Award for Excellence in Teaching.
- 2002 – Fellow of the Academy of Social Sciences.
- 1999, 2000, 2001, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 – University of Melbourne: Dean's Certificate for Good Teaching; 2002 – Dean's Individual Award for Innovation in Teaching.

- 1997 - Academy of the Social Sciences in Australia - Medal for Excellence in Scholarship in the Social Sciences.
- 1996 - Economic Society of Australia - Prize for Best Paper in Economic Record.
- 1984 - 1988: Yale University:
  - Yale University Fellowship
  - Raymond P. Powell Prize for Excellence in Teaching
  - Carl Arvid Anderson Prize Fellowship in Economics
- 1979 - 1982: University of Melbourne: First in Honours Class in Economics; Australian Finance Conference Prize; Shell Exhibition; Ian Purves MacNeil Exhibition; Wilfred Prest Prize in Economics; Rosemary Merlo Prize in Ancient History.

#### **Major Invited Lectures:**

'The Australian labour market: The more things change...', Giblin Lecture, University of Tasmania, November 20 2014.

#### **Major external positions:**

- Member, External Advisory Panel on Employment Services, Commonwealth Department of Employment, 2018.
- President, Economic Society of Australia, Victorian Branch, 2016 -.
- Member of selection panel, Australian Research Council Laureate Professor scheme, 2017.
- Member, Academic Reference Panel, Commonwealth Treasury, 2006-09.
- Australian Research Council – Excellence in Research in Australia – Member of Economics and Commerce panel, 2012.

#### **Publications:**

##### **A. Books**

Borland, J. (2016), Microeconomics: Case studies and applications (Melbourne, Cengage, 3<sup>rd</sup> edition).

Borland, J. (2013), Microeconomics: Case studies and applications (Melbourne, Cengage, 2<sup>nd</sup> edition).

Borland, J. (2008), Microeconomics: Case studies and applications (Melbourne, Cengage, 1<sup>st</sup> edition).

Borland, J., R. Gregory and P. Sheehan (eds.) (2001), Work Rich, Work Poor (Melbourne, VUT Press).

Debelle, G. and J. Borland (eds.) (1998), Unemployment and the Australian Labour Market (Sydney, Reserve Bank of Australia).

Creedy, J., J. Borland and J. Eichberger (eds.) (1991), Recent Developments in Game Theory (London, Edward Elgar).

## B. Chapters in Books

Borland, J. (2014), 'Microeconomic reform', pages 419-37 in G. Withers and S. Ville (eds.) Cambridge Handbook of Australian Economic History (Melbourne, Cambridge University Press).

Borland, J. (2011), 'The Australian labour market in the 2000s: the quiet decade', pages 165-218 in H. Gerard and J. Kearns (ed.) The Australian Economy in the 2000s (Sydney, Reserve Bank of Australia).

Borland, J., Y. Tseng and R. Wilkins (2005), 'Experimental and Quasi-Experimental Methods of Microeconomic Program and Policy Evaluation', pages 83-118 in Quantitative Tools for Microeconomic Policy Analysis (Canberra, Ausinfo).

Borland, J. (2003), 'Labour markets and industrial relations', pages 94-117 in S. Dowrick, R. Hassan and I. McAllister (eds) Cambridge Handbook of the Social Sciences in Australia (Cambridge University Press).

Borland, J. (2002), 'The markets for medical specialists in Australia', pages 245-292 in Productivity Commission, Health Policy Roundtable (Canberra, Ausinfo).

Borland, J., P. Gregg, G. Knight and J. Wadsworth (2002), "They Get Knocked Down, Do They Get Up Again? Displaced Workers in Britain and Australia", pages 301-373 in Peter Kuhn (ed.) Displaced Workers – An International Comparison (Kalamazoo, MI., Upjohn Institute).

Borland, J. (2001), "Job Stability and Job Security in Australia", pages 142-159 in Jeff Borland, Robert Gregory and Peter Sheehan (eds.) Work Rich, Work Poor (Melbourne, VUT Press).

Gregory, R. and J. Borland (1999), "Recent Developments in Public Sector Labor Markets", pp. 3573-3630 in Orley Ashenfelter and David Card (eds.) Handbook of Labor Economics - Volume 3C (North Holland, Amsterdam).

Borland, J. and S. Kennedy (1998), "Dimensions, Structure and History of Australian Unemployment", pp.68-99 in Guy Debelle and Jeff Borland (eds.) Unemployment and the Australian Labour Market (Sydney, Reserve Bank of Australia).

Borland, J. (1998), "Rural Labour Markets in Australia - A Review" pp.142-154 in Proceedings of the National Agricultural and Resource Outlook Conference (Canberra, Australian Bureau of Agricultural and Resource Economics).

Borland, J. (1998), "Microeconomic Reform and Displaced Workers - An Introduction", pp. 365-399 in Productivity Commission Microeconomic Reform and Productivity Growth (Canberra, Productivity Commission).



Borland, J. (1997), "Changes in the Supply of Labour in Australia", pp.19-44 in Industry Commission Changing Labour Markets: Prospects for Productivity Growth (Melbourne, Industry Commission).

Borland, J. and K. Norris (1996), "Equity", pp.87-106 in Keith Norris and Mark Wooden (eds.) The Changing Australian Labour Market (Canberra, EPAC).

Borland, J., B. Chapman and M. Rimmer (1992), "Microeconomic Reform in the Australian Labour Market", pp.99-126 in Microeconomic Reform in Australia, Peter Forsythe (ed.) (Sydney, Allen and Unwin).

Borland, J. (1991), "Multiple Agent Models", pp.141-162 in Recent Developments in Game Theory, John Creedy, Jeff Borland and Jurgen Eichberger (eds.) (London, Edward Elgar).

### **C. Refereed Journal Articles**

Seltzer, A. and J. Borland (forthcoming), 'The impact of the 1896 Factory and Shops Act on Victorian labour markets', Journal of Economic History.

Borland, J. and M. Coelli (2017), 'Are robots taking our jobs?', Australian Economic Review, 50, 377-97.

Borland, J. and M. Coelli (2016), 'Labour market inequality in Australia', Economic Record, 92, 517-47.

Coelli, M. and J. Borland (2016), 'Job polarization and earnings inequality in Australia', Economic Record, 92, 1-27.

Borland, Jeff (2015), 'The Australian labour market: The more things change...', Australian Economic Review, 48, 225-42.

Borland, J. (2014), 'Dealing with unemployment: What should be the role of labour market programs?', Evidence Base, Issue 4, available at: <https://journal.anzsog.edu.au/publications/25/EvidenceBase%202014Issue4Version1.pdf>

Jordan, B., Tseng, Y., Coombs, N., Kennedy, A. and J. Borland (2014), 'Improving lifetime trajectories for vulnerable young children and families living with significant stress and social disadvantage: The Early Years Education Program', BMC Public Health, 14, 965 (10 pages).

Borland, J. and A. Leigh (2014), 'Unpacking the beauty premium: What channels does it operate through and has it changed over time?', Economic Record 90, 17-32.

Davis, J., Verhagen, E., Bryan, S., Liu-Ambrose, T., Borland, J., Buchner, D., Hendriks, M., Weiler, R., Morrow, J., van Mechelen, W., Blair, S., Pratt, M., Windt, J., al-Tunaiji, H., Macri, E., Khan, K (2014), '2014 Consensus statement from the first Economics of

Physical Inactivity Consensus (EPIC) Conference (Vancouver)', British Journal of Sports Medicine, 48, 947-51.

Borland, J., Y. Tseng and R. Wilkins (2013), 'Does coordination of welfare services' delivery make a difference for extremely disadvantaged jobseekers: Evidence from the YP4 trial', Economic Record 89, 469-89 [Won Prize for Best Paper in 2013].

Killackey, E., K. Abbott, S. Cotton, H. Jackson, R. Scutella, Y. Tseng, J. Borland, T. Proffitt, S. Hunt, F. Kay-Lambkin, G. Chinnery, G. Baksheev, M. Alvarez-Jimenez and P. McGorry (2013), 'A randomized control trial of vocational intervention for young people with first episode psychosis: method', Early Interventions in Psychiatry, 7, 329-37.

Borland, J. (2012), 'Industrial relations reform in Australia: Chasing a pot of gold at the end of the rainbow', Australian Economic Review, 45, 269-89.

Borland, J. and Y. Tseng (2011), 'Does 'Work for the dole' work?: An Australian perspective on work experience programs', Applied Economics, 43, 4353-68.

Borland, J., L. Lee and R.D. Macdonald (2011), 'Escalation effects and the player draft in the AFL', Labour Economics, 18, 371-80.

Hicks, R. and J. Borland (2010), 'Are health economics making us sick?', Journal of Nuclear Medicine, 51 (11), 1665-67.

Borland, J., Chicu, M. and R. Macdonald (2009), 'Do teams always lose to win?: Performance incentives and the player draft in the Australian Football League', Journal of Sports Economics, 10, 451-84.

Borland, J. and Tseng, Y. (2007), 'How do administrative arrangements affect exit from unemployment payments? The case of the Job Seeker Diary in Australia', Industrial and Labor Relations Review, 60, 357-78.

Borland, J. (2006), 'What can a young labour economist (or any economist) learn from Bob Gregory?', Economic Record, 82, 122-26.

Borland, J. and R. Macdonald (2003), 'The demand for sport', Oxford Review of Economic Policy, 19, pp.478-502.

Kennedy, S. and J. Borland (2000), "A Wage Curve for Australia?", Oxford Economic Papers, 52, pp.774-803.

Borland, J. and B. Hunter (2000), "Does Crime Affect Employment Status?: The Case of Indigenous Australians", Economica, 2000, 67, pp.123-144.

Borland, J. (1999), "Earnings Inequality in Australia: Changes, Causes and Consequences", Economic Record, 75, pp.177-202.

Borland, J., J. Hirschberg and J. Lye (1998), "Earnings of Public Sector and Private Sector Employees in Australia: Is There a Difference?", Economic Record, 74, pp.36-53.

Borland, J. and J. Eichberger (1998), "Organisational Form Outside the Principal-Agent Paradigm", Bulletin of Economic Research, vol.50, pp.201-228.

Borland, J. (1996), "Education and the Structure of Earnings in Australia", Economic Record, vol.72, pp.370-380.

Borland, J. and L. Foo (1996), "The Composition of Employment in Manufacturing Industry", Journal of Industrial Relations, vol.38, pp.442-466.

Borland, J. and J. Lye (1996), "Matching and Mobility in the Market for Australian Rules Football Coaches", Industrial and Labor Relations Review, vol.50, pp.145-160.

Borland, J. and R. Wilkins (1996), "Earnings Inequality in Australia", Economic Record, vol.72, pp.7-23.

Borland, J. (1996), "Job Creation and Job Destruction in Manufacturing Industry in Australia", Economic Record, vol.72, pp.46-62 [Won Prize for Best Paper, 1996].

Borland, J. (1996), "Union Effects on Earnings Dispersion in Australia, 1986-1994", British Journal of Industrial Relations, vol.34, pp.237-248.

Borland, J. (1995), "Male Labour Market Participation in Australia", Journal of Industrial Relations, vol.37, pp.587-609.

Borland, J. and S. Ouliaris (1994), "Determinants of Union Membership in Australia", Journal of Applied Econometrics, vol.9, pp.453-468.

Borland, J. and A. Suen (1994), "The Experience-Earnings Profile in Australia", Economic Record, vol.70, pp.44-55.

Borland, J. (1992), "Career Concerns: Incentives and Endogenous Learning in Labour Markets", Journal of Economic Surveys, vol.6, pp.251-270.

Borland, J. and X. Yang (1992), "Specialization and a New Approach to Economic Organization and Growth", American Economic Review Papers and Proceedings, vol.82, pp.386-391.

Borland, J. and J. Lye (1992), "Attendance at Australian Rules Football: A Panel Study", Applied Economics, 24, pp.1053-1058.

Yang, X. and J. Borland (1991), "A Microeconomic Mechanism for Economic Growth", Journal of Political Economy, 99, pp.460-482.

Borland, J. and A. Suen (1990), "Individual Wage Determination in Australia: Competitive and Noncompetitive Influences", Australian Economic Review, 23(4), pp.33-44.

Borland, J. (1987), "The Demand for Australian Rules Football", Economic Record, 63, pp.220-230.

Borland, J. (1986), "Ross Versus Dunlop: The Debate Revisited", Journal of Labor Research, 7, pp.293-307.

#### **D. Non-Refereed Journal Articles**

Labour Market Snapshots – November 2013 onwards -  
<https://sites.google.com/site/borlandjum/labour-market-snapshots>

Borland, J. (2016), 'Wage subsidy programs: A primer', Australian Journal of Labour Economics, 19(3): 131-44.

Borland, J. (2012), 'I want to be an economist: A rejoinder to Ross Gittins', Australian Economic Review, 45, 386-94.

Borland, J. and Y. Tseng (2011), 'A primer on doing evaluations of social programs', Parity, 24:7, 8-10.

'What happens to the Australian labour market in recessions?', Australian Economic Review, 2009, 42, 232-42.

'Economic design and professional sporting competitions', Australian Economic Review, 2006, 30, 435-41.

'Xiaokai Yang and the economics of specialization', Economic Papers, 2006, 25, 171-76.

'Comment on 'The five economists' plan: the original idea and further developments'. Australian Journal of Labour Economics, 5, 239-242.

'The Equal Pay Case – 30 Years On', Australian Economic Review, 1999/3, pp.265-272.

"Unemployment - Prospects and Policies", Australian Economic Review, 1997/4, pp.391-404.

"Labour Market Flows Data for Australia", Australian Economic Review, 1996/2, pp.225-235.

"An Assessment of the Green Paper on 'Restoring Full Employment'", Australian Economic Review, 1994/1, pp.8-11.

"Contracting-Out: Some Labour Market Considerations", Australian Economic Review, 1994/3, pp.86-90.

#### **E. Teaching notes**

"Teaching Note: Incomes Policies in Australia", Australian Economic Review, 1991/2, pp.45-50.

"Teaching Note: Unemployment in Australia", Australian Economic Review, 1990/1, pp.41-51.

"Teaching Note: Worker Training", Australian Economic Review, 1990/4, pp.74-80.

"Teaching Note: Trade Unions in Australia", Australian Economic Review, 1989/4, pp.66-73.

## F. Unpublished reports

Tseng, Y., Jordan, B., Borland, J., Coombs, N., Cotter, K., Hill, A. and A. Kennedy (2018), *Changing the Life Trajectories of Australia's Most Vulnerable Children – Report no.2: The first twelve months in the Early Years Education Program: An assessment of the initial impact on children and their primary caregivers*; [https://drive.google.com/file/d/1sF\\_SVK0viPHkek9812S8mJ5YX5RzW0dP/view](https://drive.google.com/file/d/1sF_SVK0viPHkek9812S8mJ5YX5RzW0dP/view)

Tseng, Y., Jordan, B., Borland, J., Clancy, T., Coombs, N., Cotter, K., Hill, A. and A. Kennedy (2017), *Changing the Life Trajectories of Australia's Most Vulnerable Children – Report no.1: Participants in the Trial of the Early Years Education Program*; <https://drive.google.com/file/d/1SHfKDGxIUaDdg9MgMMKEbRsLIg5SVclC/view>

Borland, J., M. Considine, G. Kalb and D. Ribar (2016), 'What are best-practice programs for jobseekers facing high barriers to employment', Melbourne Institute Policy Briefs Series 4/16, [https://www.melbourneinstitute.com/downloads/policy\\_briefs\\_series/pb2016n04.pdf](https://www.melbourneinstitute.com/downloads/policy_briefs_series/pb2016n04.pdf)

## G. Book Reviews

Review of India's Long Road: The Search for Prosperity by Vijay Joshi (Oxford University Press, New York, 2017), Economic Record, 2017, 93, 655-56.

Review of The Great Escape: Health, Wealth and the Origins of Inequality by Angus Deaton (Princeton, Princeton University Press, 2013), Economic Record, 90, 401-03.

Review of James Heckman, Giving Kids a Fair Chance (Cambridge: Mass., MIT Press, 2013), Economic Record, 2013, 89, 582-84.

Review of John Murphy, A Decent Provision: Australian Welfare Policy, 1870-1949 (Surrey: UK, Ashgate, 2011) Enterprise and Society, 14, 858-60.

Review of Barry Dyster and David Meredith, Australia in the Global Economy: Continuity and Change (Melbourne, Cambridge University Press, 2012, 2<sup>nd</sup> edition) Australian Economic History Review, 53, 318-20.

Review of Tim Maloney Benefit Reforms and Labour Market Behaviour in New Zealand (Wellington, Institute of Policy Studies – Victoria University, 1997), Labour Market Bulletin, 1998, pp.162-168.

Review of John Neil (ed.) Poverty and Inequality: The Political Economy of Redistribution (Kalamazoo: Mich, Upjohn Institute, 1997), Comparative Labor Law and Policy Journal, 1998, vol.19, pp.491-492.

Review of Steve Davis, John Haltiwanger and Scott Schuh Job Creation and Destruction (Cambridge: Mass., MIT Press, 1996), Economic Record, 1996, vol.72, pp.409-411.

Review of Alison Booth The Economics of the Trade Union (Cambridge, Cambridge University Press, 1995), Economic Record, 1996, vol.72, pp.298-300.

Review of Eric Rasmusen Games and Information: An Introduction to Game Theory

(Oxford, Basil Blackwell, 1989), Economic Record, 1991, vol.67, pp.175-176.  
Review of H.M. Nalbantian (ed.) Incentives, Cooperation, and Risk Sharing (New Jersey, Rowman and Littlefield, 1987), Economic Record, 1989, vol.65, pp.87-89.

### **Research Grants:**

- University of Melbourne, Special Initiatives Grant, 1989, Wage Determination in Australia, \$13,000.
- Australian Research Council, Small Grant, 1990, Testing Models of Inflation and Unemployment, \$14,152 (joint with Professor Ian McDonald).
- Australian Research Council, Small Grant, 1992, The Distribution of Income in Australia, \$7,000.
- Australian Research Council, Large Grant, 1993-94, The Distribution of Income in Australia, \$40,000.
- Australian Research Council, Small Grant, 1994, Employment in Manufacturing Industry in Australia, \$9,000.
- Australian Research Council, Large Grant, 1998-2000, Jobs, Gender and Inequality, \$139,000 (joint with Professor Bob Gregory and Professor Peter Sheehan).
- Australian Research Council/DEETYA, Strategic Partnerships with Industry Grant, 1998-2000, Increasing Labour Market Inequality: Trends, Causes, Implications and Responses, \$237,956 (joint with Professor Bob Gregory and Professor Peter Sheehan) (C79804860).
- Australian Research Council, Small Grant, 1999, Job Tenure and Job Security in Australia: Changes and Consequences - An Empirical Investigation, \$11,000.
- Australian Research Council, Large Grant, 1999-2001, The Labour Market Consequences of Microeconomic Reform, \$121,900.
- Australian Research Council, Small Grant, 2000, Contracting out and white-collar employment in Australia, \$6,700.
- Australian Research Council/DEETYA, Strategic Partnerships with Industry Grant, 2001-03, Changing work arrangements and job quality in Australia, \$66,876 (C00106792).
- Commonwealth Department of Family and Community Services, 2001-04, Member of Melbourne Institute team awarded contract to undertake social policy research, \$3M..
- Australian Research Council, Large Grant, 2002-04, Microeconomics of professional sporting competitions and labour markets, \$182,000 (Joint with Professor Stephen King) (DP0209564).
- Australian Research Council/DEETYA, Strategic Partnerships with Industry Grant, 2002-04, Job vacancies in Australia, \$67,635 (Joint with Don Harding) (LP0215949).
- Australian Research Council, Linkage Grant, 2003-05, Low-skill workers in Australia, \$69,099 (Joint with Michael Shields) (LP0347397).
- Australian Research Council, Discovery Grant, 2003-05, The dynamics of economic and social change: An analysis of the HILDA survey, \$360,000 (Joint with Mark Wooden and Alan Duncan) (DP0342970).
- Australian Research Council Linkage - Intergenerational Transmission of Dependence on Income Support: Patterns, Causation and Implications for Australian Social Policy (2004-08; \$500,000; with Dr Deborah Cobb-Clark, Dr Robert Breunig, Dr

Tue Gørgens, Professor Robert Haveman, Professor Barbara Wolfe and Ms Jocelyn Pech) (LP0347164).

- Australian Research Council, Discovery Grant, 2006-08, Labour market transitions and dynamics in Australia: An analysis of the HILDA survey, \$450,000 (Joint with Mark Wooden and Kostas Mavromaras) (DP0663362).
- Australian Research Council, Linkage Grant, 2006-08, Experimental evaluation of YP4 – Is ‘joining up’ services for homeless and jobless people a net benefit to society?, \$243,255 (Joint with Yi-Ping Tseng and Roger Wilkins) (LP0668208).
- Australian Research Council, Discovery Grant, 2007-09, New perspectives on Australian economic history: Geography, institutions and major episodes, \$225,000 (Joint with Andrew Clarke, Russell Hillberry and Lawrence Uren) (DP0772302).
- Australian Research Council, Linkage Grant, 2008-11, Improving employment outcomes in early psychosis: Social and economic benefits of early intervention, \$380,286 (Joint with Eion Killackey, Henry Jackson, Rosanna Scutella and Yi-Ping Tseng) (LP0883237).
- Australian Research Council, Linkage Grant, 2014-17, A benefit-cost analysis of an early years education program, \$329,000 (Joint with Yi-Ping Tseng) (LP140100897).
- Australian Research Council, Discovery Grant, 2016-18, Australian labour market adjustment to technology, trade and policy, \$245,000 (Joint with Mick Coelli) (DP160102269).

#### **Journal Editing:**

- Economic Record: 1998, Co-editor; 1999-2002, Editor; 2003–, Editorial Board.
- Australian Economic Review: 1992–, Associate Editor; 2007-10, Editor of ‘For the Student’ section.
- Australian Social Monitor: 1999–2002, Editorial Board.
- Journal of Sports Economics: 2002 - , Editorial Board.
- Economic Inquiry: 2010 -14, Co-editor (Sports economics).

#### **Journal Refereeing:**

American Economic Review; Australian Economic Papers; Australian Bulletin of Labour; Australian Economic Review; British Journal of Industrial Relations, Cambridge Journal of Economics; Economic Inquiry; Economic Journal; Human Relations; Industrial and Labor Relations Review; Industrial Relations, International Economic Review; Journal of Development Economics; Journal of Economic Education; Journal of Economic Literature, Journal of Economic Surveys; Journal of Industrial Economics; Journal of Industrial Relations; Journal of Institutional and Theoretical Economics; Journal of Law, Economics and Organisation; Journal of Political Economy; Journal of Royal Statistical Society; Journal of Sports Economics; Journal of Sports Management; Labour Economics; Managerial and Decision Economics; New Zealand Economic Papers; Political Studies; Review of Economics and Statistics; Review of Industrial Organisation; Scandinavian Journal of Economics.

### **Major talks (2005 onwards):**

'Job polarisation and earnings inequality', Invited presentation to Victorian Department of Economic Development etc., Talking economics series, February 8 2018.

'Will robots take our jobs?', Invited presentation to Commonwealth Department of Employment, Canberra, April 26 2018; Invited presentation to Commonwealth Department of Prime Minister and Cabinet, Canberra, August 23 2018; Invited presentation to Economic Society of NSW, September 28 2018.

'An economics and education perspective on early childhood investment – with particular reference to children living in adverse circumstances', The Early Years Economic Summit and Think Tank, Telethon Kids Institute, Perth, November 8 2018.

'The drivers of earnings inequality in Australia', Invited session on 'Inequality in Australia', Australian Conference of Economists, Sydney, July 20 2017.

'The Early Years Education Program research trial: A progress report', Melbourne Institute Economic and Social Outlook Conference, Melbourne, July 21 2017.

'Is the industrial relations system a brake on Australia's economic performance?', Invited panel at the Australian Conference of Economists, Flinders University, July 12 2016.

'Labour force participation in Australia', Invited presentation to Treasury/CAMA conference on 'Shaping the next decade: Economic trends in the global economy', Crawford School, ANU, August 23 2016.

'Wage subsidies in Australia: An overview', Invited presentation to Commonwealth Department of Employment 'Wage Subsidy Symposium', Canberra, August 26 2016.

'What are best practice programs for jobseekers facing high barriers to employment?', Melbourne Institute Policy Forum, Canberra, September 6 2016.

'Is technology going to take your job?', Economic Society of Australia, Policy in the Pub, June 15 2016.

'Local employment programs for jobseekers facing high barriers to employment', Regional Development Victoria, Regional Futures Summit, Bendigo, July 20 2016.

Macquarie University, Department of Economics Conference on 'Teaching economics as if it Matters: Content, Relevance and Resonance', Invited presentation on 'First year reflections', December 5 2016.

'Labour market inequality: The Australian experience', Inequality in Anglo-American countries, Munk School of Government, University of Toronto, March 13 2015.



'Policies to assist young people into work', International conference on welfare reform, ANU, September 17 2015.

'What is happening with long-term unemployment in Australia today?', Keynote address to the Australia and New Zealand Mental Health Association annual conference, Melbourne, November 10 2015.

'Earnings inequality', Presentation to 'The Future of Work' conference, Centre for Workplace Leadership, University of Melbourne, November 12.

'The Australian labour market: The more things change...', Giblin Lecture, University of Tasmania, November 20 2014.

'The Australian labour market: Some thoughts on big drivers', Australian Workforce Productivity Agency/Academy of Social Sciences in Australia Forum, Sydney, February 28 2014.

'Is the Australian labour market in crisis?', Economic Society of Australia (Victoria) Young Professionals' Breakfast, Melbourne, October 15 2014.

'Using administrative data for retrospective policy evaluation', Presentation to workshop on 'Evidence-based policy-making, US Studies Centre, University of Sydney, January 29 2013.

'Why is Australia so rich?', Presentation to Australia Club 'Town and Gown' series, March 1 2013.

'Answers to questions about using RCTs for policy evaluation', Presentation to workshop on 'Evidence-based policy-making, US Studies Centre, Canberra, July 5 2013.

'An economic perspective on program evaluation' EPIC workshop, University of British Columbia, April 27 2011.

2009 Tertiary Education Policy Seminars, CSHE, University of Melbourne, Presented 'Higher education and the Commonwealth budget: An outsider's perspective'.

Invited presenter, Plenary session on 'What are the big questions in the economic history of Australia and New Zealand?', Australian and Pacific Economic and Business History Conference, University of Sydney, 2007.

DVC (Academic) Summit on Internationalising Teaching, 2006, Presented 'A personal account of teaching a diverse student cohort'.

Australian Institute of Employment Rights, Forum on the Fair Pay Commission, 2006, Presented 'How will the AFPC affect the labour market?: Lessons from the minimum wage literature'.

IZA International Conference on Program Evaluation, 2005, Presented 'Evaluation of activity test arrangements on exit from unemployment payments: Mutual Obligation', Australian National University.

Transitions and Risk Conference, 2005, Presented 'Ten things to know about labour market programs' (Keynote address), University of Melbourne.

# A. J. MACKEN & CO.

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## PRIVILEGED AND CONFIDENTIAL

18 May 2018

**Professor Jeff Borland**  
Department of Economics  
The University of Melbourne

By email: [jib@unimelb.edu.au](mailto:jib@unimelb.edu.au)

Dear Professor Borland

**4 Yearly Review of Modern Awards – General Retail Industry Award 2010 – Fair Work Commission, AM2017/43**

We act for the Shop, Distributive and Allied Employees' Association (the SDA).

The SDA is participating in a review by the Fair Work Commission (the **Commission**) of the terms of the *General Retail Industry Award 2010* (the **Award**). The Award prescribes minimum terms and conditions of employment for workers employed in the retail industry throughout Australia. The SDA represents members employed in the retail industry.

As part of the review, in proceeding AM2017/43 (the **proceeding**), the Commission is dealing with applications by the SDA to vary certain terms of the Award which prescribe penalty rates to be paid to employees employed on a casual basis for work performed on Saturdays and on weeknight evenings (the **casual penalty rates review**).

As further explained below, you are retained by the SDA to prepare a written expert report addressing certain matters pertaining to the casual penalty rates review.


In this letter, we set out:

- (a) relevant background information;
- (b) the questions your expert report must address;
- (c) the form of your report; and
- (d) information about timing.

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Industrial & Employment Law  
- Industrial Advisings  
- Executive Contracts & Advice  
- Career Planning & Placement

Superannuation Law  
Taxation Law  
Administrative Law  
Australian Polish Relations

  
Mediation  
Human Resources  
Media & Publications  
Sports Law & Contracts

## A Background Information

The SDA represents workers employed in a number of industries and sectors including the retail industry. The Award covers employers throughout Australia in the general retail industry and their employees employed in various classifications set out in the Award.

### *The Award*

The Award provides that employees will be employed on either a full-time, part-time or casual basis. These different types of employment, their features and the requirements relating to each are principally set out in clauses 10-13 of the Award. We draw your attention to the following requirements prescribed by those clauses:

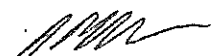
- (a) a full time employee is an employee who is engaged to work an average of 38 hours per week: cl 11;
- (b) a part time employee is an employee who works less than 38 hours per week and has reasonably predictable hours of work: cl 12.1. Further requirements in relation to part time employment are set out in subclauses 12.2-12.10;
- (c) a casual employee is an employee engaged as such and will be paid both the hourly rate payable to a full time employee and an additional 25% of the ordinary hourly rate for a full time employee (the **casual loading**): cl 13;
- (d) the minimum daily engagement for both casual employees and part time employees is three hours: cll 12.2, 12.5 and 13.4 (except for full time secondary students employed on a casual basis if the requirements in clause 13.4 are met; in relation to those employees the minimum daily engagement is 1 hour and 30 minutes).

We have enclosed a copy of the Award at **Annexure A**.

We further note that the effect of the Award and the National Employment Standards (NES) set out in the *Fair Work Act 2009* (the Act) is that casual employees have no entitlement to the following benefits to which part time and full time employees are entitled: annual leave; paid personal/carer's leave and compassionate leave; and notice of termination and redundancy pay.

### *Penalty rates*

The Award provides for the payment of penalty rates to employees for work performed on weeknights, Saturdays, Sundays and public holidays. The specific penalty rates which are payable vary between these days and times and also depend on whether the employee is engaged on a casual basis, or alternatively, a full-time or part-time basis.



*The SDA's application*

By its application in the proceeding, the SDA seeks that the Award be varied so as to provide that casual employees have an entitlement to be paid the same penalty rates to which part time and full time employees are entitled for work performed on weeknights and on Saturdays (in addition to payment of the casual loading of 25% to which they are currently entitled) (the **variations to the Award proposed by the SDA**).

The following table sets out the current penalty rate entitlements provided by the Award for different types of employees in respect of weeknight and Saturday work and the penalty rates which would apply in the event that the variations to the Award proposed by the SDA were granted by the Commission. We have also noted in the table the casual loading paid to casual employees.

	<b>Current Award penalty rate provision: full time and part time employees</b>	<b>Current Award penalty rate provision: casual employees</b>	<b>Award penalty rate provision proposed by SDA - full time and part time employees</b>	<b>Award penalty rate provision proposed by SDA: casual employees</b>
<b>Weeknight work</b>	25% for ordinary hours worked after 6pm.	No penalty rate (but casuals receive the casual loading of 25%)	No change	25% for ordinary hours worked after 6pm (in addition to the casual loading of 25%)
<b>Saturday work</b>	25% for ordinary hours worked (being between 7am and 6pm, or until 11pm for retailers whose trading hours extend beyond 6pm)	10% for work performed between 7am and 6pm (in addition to the casual loading of 25%)	No change	25% for ordinary hours worked (being between 7am and 6pm, or until 11pm for retailers whose trading hours extend beyond 6pm), in addition to the casual loading

*The Productivity Commission Report*

On 30 November 2015, the Productivity Commission issued its Inquiry Report into the “Workplace Relations Framework” (the **PC Report**). In Chapter 15 of the PC Report entitled “Policies for weekend penalty rates,” the Productivity Commission identified that, to ensure “neutrality of treatment” between casual and permanent employees, “there may be grounds for some casual ‘penalty’ rates to rise on Saturdays” (p. 496). The Productivity Commission then stated as follows (at 497) (the **relevant paragraph of the PC Report**):

Take care in changing casual penalty rates

However, a major proviso is that the current regulated pay levels set for casual employees are ‘rough and ready’ and may not take into account the generally lower average skills and experience of those employees. Were this to be true, achieving parity in the employer costs of employing casuals compared with permanent employees might only have the appearance of ‘equal pay for equal’ work and would disadvantage the employment of casuals. That would be unfortunate given that casual jobs are an important vehicle for gaining entry to the labour market for the disadvantaged, the young, and those needing flexible working arrangements. In that context, the wage regulator should make the presumption that casual penalty rates should fully take account of the casual loading, but should not adopt that principle without closely considering its impacts on such workers.

We have previously provided you with a copy of the PC Report.

**B Your Opinion**

Please provide a written report containing your opinion about the following:

1. The likely effects, if any, on the cost of labour in the retail sector, in the event that the variations to the Award proposed by the SDA are made.
2. The likely effects, if any, on aggregate employment in the retail sector, in the event that the variations to the Award proposed by the SDA are made.
3. The views expressed by the Productivity Commission in the relevant paragraph of the PC Report.

For the avoidance of doubt, in providing your opinion, please do not address yourself to any questions of policy or principle which you may consider should or should not be adopted by the Commission in dealing with the variations to the Award proposed by the SDA.

In providing your opinion, please ensure you have considered and addressed the matters set out in the document issued by the Federal Court of Australia entitled Expert Evidence Practice Note (GPN-EXPT)



including the "Harmonised Expert Witness Code of Conduct" and which is attached to this letter as **Annexure B**.

*Scope of opinion*

To the extent that it may be relevant, in providing your opinion in respect of the above questions, please assume that the following trading patterns on weeknights and Saturdays are characteristic of the range of hours which different retail businesses trade in metropolitan and large regional centre areas:

(a) *Supermarket A & convenience stores*

- (i) Weeknight evenings: Monday – Friday, 6.00pm to 11.00pm;
- (ii) Saturdays: 7.00am to 11.00pm

(b) *Supermarket B*

- (i) Weeknight evenings: Monday – Friday, 6.00pm to 9.00pm;
- (ii) Saturdays: 8.00am to 6.00pm.

(c) *CBD and shopping centres*

- (i) Weeknight evenings: One weeknight, 6.00pm to 9.00pm;
- (ii) Saturdays: 9.00am to 5.00pm

(d) *Strip shopping*

- (i) Weeknight evenings: -
- (ii) Saturdays: 9.00am to 5.00pm

**C Form of Your Report**

Your role is to assist the Commission by providing your expert opinion in accordance with this letter of instruction. Please address your report to the Fair Work Commission.

In order to ensure your report can be used easily at the hearing of this matter, we ask that you include the following matters in the report:

- (a) a brief summary of your opinion or opinions at the beginning of the report;
- (b) a glossary of any specialised terminology;
- (c) references to any literature or other materials cited in support of your opinions. Please use a uniform citation method throughout the report. If you use parenthetical referencing (Chicago-style citation), please provide pinpoint citations where applicable;
- (d) a bibliography;

- (e) numbered paragraphs and page numbers, and headings where appropriate; and
- (f) margins of at least 2.5 centimetres, and line spacing of at least 1.5 points, with 12 points between paragraphs.

Please annex to your report:

- (g) a detailed curriculum vitae, setting out the study, training, and experience that establishes your expertise in relation to the issues raised by these instructions; and
- (h) this letter of instruction.

At the conclusion of your report, please include a declaration to the following effect:

*I have made all the inquiries that I believe are desirable and appropriate (save for any matters identified explicitly in my report) and that no matters of significance that I regard as relevant have, to my knowledge, been withheld from the Commission.*

#### **D Communications and Timing**

##### *Timing of report*

Please provide your report as soon as possible.

##### *Hearing*

The proceeding is listed for hearing from **13 August 2018 until 17 August 2018**. It is likely that you will be required to give evidence at the hearing. We will confirm whether you are required to give evidence and the date you are required to attend at the Commission closer to the hearing and as soon as possible. If there are any specific days in the above period when you are not available to give evidence, please advise as soon as possible.

If you have any questions in relation to this matter, please contact Dominic Macken of our office on (03) 9614 4899.

Yours faithfully,



**AJ MACKEN & CO.**