

**PRODUCTIVITY COMMISSION**  
**INQUIRY INTO WORKPLACE RELATIONS**

**Submission re Minimum Wage and Weekend Penalty Rates**

**25 February 2015**

**A Matter of Principle**

In 1904 the foundations of our Industrial Relations and award system was created. This included the creation of the Australian Conciliation and Arbitration Commission (ACAC).

One of the central objectives of the ACAC was similar to that of the Productivity Commission Inquiry; “fair and equitable pay and conditions of employees including the maintenance of a relative safety net”.

The ACAC sought to meet the above criteria by developing a set of principles to guide it in its decision making.

These principles set out to ensure that the decisions of the ACAC protect the family, were rational and consistent and fair to all workers and for that reason its decisions were accepted more than would have otherwise been the case.

Historically the minimum wage and weekend penalty rates have been regarded as industrial relations issues and as a result the decisions made in respect of these two entitlements have been based on the principles of the ACAC.

In my submission the Productivity Commission’s recommendations should be based on the ACAC principles.

**Relevant Principles**

For the purpose of this submission I will only refer to a limited number of principles.

Those principles are:

- family basic needs principle;
- equal pay for work of equal value;
- comparative justice;

In my view the family well- being was always the most important principle.

## THE MINIMUM WAGE

### The Harvester Decision

On the basis of my analysis, Judge Higgins fixed the minimum wage based on the principle that the needs of the family had priority over all other industrial relations considerations including employer profitability.

This is demonstrated in a number of ways:

Judge Higgins insisted that his “needs” component be an irreversible minimum *“Unless great multitudes of people are to be irreversibly injured in themselves and their families, unless society is to be perpetually in industrial unrest, it is necessary to keep this living wage as a thing sacrosanct beyond the reach of bargaining”*.<sup>1</sup>

The family needs principle – Judge Higgins fixed in the Harvester decision a wage designed to meet the basic living needs of a man, wife and three dependent children and not on the employers’ capacity to pay.<sup>2</sup>

Higgins required employers to pay the basic needs of five people even though they only employed one.

On closer examination his decision also recognised that labour was different to all other commodities because it was human. *“Normal needs of an average employee regarded as a human being living in a civilised society.”*<sup>3</sup>

The Higgins decision also recognised that workers had cultural as well as physical needs. This view is supported by the fact that in fixing the amount of the minimum wage he allowed for *“the cost of books and newspapers, amusement and holidays, liquor, tobacco”*. These cultural needs have since increased and enriched our quality of life and helped us manage the stresses of modern day life.<sup>4</sup>

Protecting the family unit was the ACAC principle consideration rather than economic and equity considerations. This was highlighted by the fact that a single male worker, who did not have dependents, was awarded the same basic wage as workers with a family. The reason for this decision was explained by Mr. Justice Powers in the Theatrical Case in 1917 when he said *“The single man often gets more than his work is worth, but if single men were paid less than married men the cheaper labour would be employed and they would not make the necessary provisions for marriage”*. It also protected the married man from being priced out of work.<sup>5</sup>

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<sup>1</sup> Deery, S. Plowman, D. Australian Industrial Relations Second Additions, p.288

<sup>2</sup> Ibid, p.288

<sup>3</sup> Ibid. p. 287

<sup>4</sup> Ibid. p.286

<sup>5</sup> Ibid. p.309

## History

According to my understanding, the only time the minimum wage has been cut was during the Great Depression of the 1930s. The cut was 10%. At the time 30% of the workforce was unemployed.

We do not face an economic crisis of that dimension today and when we did face a series of economic crisis since the Great Depression the minimum wage was not cut.

The economy recovered from these crises and developed to become one of the most developed economies in the world.

History tells us that our minimum wage system has helped to ensure we are a civilised society and that the minimum wage has served the national interest.

## Jobs

There are many macro factors which influence the level of employment.

I reject the employers' arguments that a reduction in the minimum wage will create jobs. The level of employment is determined by many factors such as inflation, interest rates, and the state of the global economy. Particularly our trading partners, the level of competition, government policy, the value of the dollar, business confidence, employers investment strategy and employer's systems of production etc.

As stated earlier history shows that the argument that a reduction in the minimum wage would create jobs was never accepted.

The family principle prevailed over the arguments that a cut in the minimum wage create jobs.

History suggests that in a national sense the minimum wage does not undermined jobs.

In my view, when employers argue that the minimum wage should be cut to create jobs, it is time to change the government not the minimum wage.

## Review

The current minimum wage is the product of many annual reviews in which all parties have the opportunity to make submissions. After considering all of those submissions the (tribunal) makes a decision.

I am concerned that this review is politically motivated and I do not want to see the minimum wage or penalty rates become the victim of politics. My reasons are that the minimum wage in America is determined largely by political considerations and the results are unjust and defy logic. The minimum wage in the various states of America vary greatly and average at about \$7.50 per hour and are well below the American poverty line.

In my submission, I propose the Productivity Commission recommend that the minimum wage continue to be fixed by an independent tribunal.

### Summary – Minimum Wage

If the minimum wage is reduced:

- We know that over one million families will suffer a wage cut and as a result their living standards will fall;
- We know that lower income families who are currently under great stress will be put under greater stress;
- We know that the employers labour cost will fall;
- We know that the employer will decide if the cut in labour costs will be passed on;
- We know that employers are mainly motivated by self-interest;
- We know from history that most employers will not pass on reductions in labour cost;
- We know that a cut in workers take home income will reduce the purchasing capacity of the worker and their family and this will reduce domestic demand which determines how many workers companies employ;
- We know that the Productivity Commission can do nothing to change this position;
- We know that the Productivity Commission will have failed to realise one of its key terms of reference “Fair and equitable pay and conditions of employees including the maintenance of a relative safety net.”

### **PENALTY RATES**

The social significance of penalty rates is well summarised by the Shop, Distribution and Allied Employees Association in the Productivity Commission report which I support:

*“The very fabric of our society by engaging with friends, family and the wider community and these times frequently occur in the evenings, on weekends, and on public holidays. For those who work during these times, regardless of whether or not they have elected or been required to, they are deserving of recompense for missing out on valued and valuable social times, particularly when they are amongst the lowest paid workers in the country”.*

Penalty rates have proven to be a successful way of managing the weekend labour needs of industry, the economy and the community.

At the same time penalty rates has acted as a deterrent to the unnecessary spread of weekend work in the interest of protecting leisure and recreation time.

I think the current system is meeting the service and shopping needs of the community while at the same time compensating those that are required to work anti-social hours.

Any cut back in penalty rates would at best only marginally improve the operation of some weekend services and shopping opportunities of the community but this would be done at the expense of those who rely on penalty rates to give them an adequate wage income. Penalty rates have rewarded workers who work weekends because they miss out on valued and valuable social time.

The current penalty provisions are now regarded by workers as part of their weekly wage and employers have factored in penalty rates into prices and cost of services and for these reasons any reduction in penalty rates will not flow on to consumers. So in my view the present situation of the payment of penalty rates should not change.

### Exemptions

The problem with granting certain employers an exemption or a lower rate of penalty pay in some industries is not a viable and fair proposition for workers.

While the position of employers may vary from industry to another it does not vary from one industry to another in respect of workers because their fundamental position does not change. They are like workers in all other industries in the sense that they sacrifice their weekends as their own time in the interest of others. So to deny them the same penalty rates as in other industries would ignore the principle of comparative justice.

Once one group of employers are exempt a snowball effect always follows, based on my experience.

Another group would come long and argue that their position, while being different in some respects, is the same as the exempt employers.

A further group will then come along and then argue that their position while being different, it is in some respects similar to the second group. This process will only end when all employers are exempt from penalty rates payment.

The exemption approach does not work so my submission is that the Productivity Commission recommendations should not go down this path. If it were to do so it would have to abandon the principles that underpin the payments of penalty rates.

Penalty rates are part of workers' wages and for this reason the comparative wage justice principle (doctrine) of the ACAC should be a guiding principle that prevails over any application for exemption from the standard weekend penalty rates provisions. This doctrine has been taken by the Commission to mean *"employees doing the same work for different employers or in different industries should by and large receive the same amount of pay irrespective of the capacity of their employers or industry..."*<sup>6</sup>

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<sup>6</sup> Ibid. 335

## Main Principles

Some of the principles that underpin penalty rates have widespread public support and acceptability.

One is the compensation principle i.e. workers who sacrifice their weekends to work to provide the essential needs of those who are able to enjoy their weekends with their family and friends or doing whatever they please and should be compensated for the sacrifices they make.

For example building workers are compensated for up to four days' pay per month when they are rained off. This compensation is designed to ensure building workers are not unfairly treated compared with workers who don't lose time because of rain.

The second example; a home buyer and a home seller always agree that the price of a house should be reduced if it was located alongside a noisy railway line compared with a price of that house if it were not near a railway line.

The principle of family having priority over all other considerations is all but a universal principle.

For the above reasons it is the responsibility of the Productivity Commission to ensure that their recommendation on the minimum wage and penalty rates should be guided by the above mentioned principles.

## Summary

- We do not know what would be the effect on social and family life if Saturdays and Sundays become ordinary working days as some propose.
- We do know that parents will spend more weekend time at work and less time with their family. We do know that this will not be good for our children and for their development.
- We do know that greater stress will be placed on all members of the family. We do know that a large number of workers will be worse off in an income and living standards sense.
- We know that the law of competition would continue to operate with or without penalty rates and some businesses will go bust even if their labour costs are reduced and workers will lose their jobs as they do now.

In January this year my family and I spent some time in Queenstown, New Zealand, which is a 7/24 town and the labour market is deregulated. We were told workers don't receive penalty rates, they work a 7/24 week, many of them finish work in the early hours of the morning and some had not has any annual leave for a number of years. Some described Queenstown as the main tourist centre in NZ. But they also describe it as a town of high prices and low wages and long hours of work. We could not find any New Zealanders

working in hospitality as waiters etc. and were told that the reason was low wages, high prices, long and anti -social hours of work.

We should think twice about whether we go down the road of a 7/24 Australia just because some businesses want to make the same level of profits on weekend days as they make on other days.

Penalty rates have proven to be a successful way of managing the week end labour needs of industry, the economy and the community.

Weekend penalty rates have limited the unnecessary spread of weekend work to the benefit of family life and we should keep it that way.

Tom McDonald

Former National Secretary, Building Workers Industrial Union