



**AUSTRALIAN CATHOLIC COUNCIL
FOR EMPLOYMENT RELATIONS
AND
CATHOLIC COMMISSION
FOR EMPLOYMENT RELATIONS**

**JOINT SUBMISSION TO THE
FAIR WORK COMMISSION PENALTY RATES CASE (AM2014/305)
FEBRUARY 2016**

INTRODUCTION

This submission has been prepared jointly by the Australian Catholic Council for Employment Relations (ACCER) and the Catholic Commission for Employment Relations (CCER). ACCER and CCER welcome the opportunity to provide a submission to the Fair Work Commission (FWC) review of penalty rates in a number of awards in the hospitality and retail sectors, as interested organisations not party to the proceedings.

The context of the submission is to provide a perspective on penalty rates based on the principles of Catholic social teaching and our expertise as the industrial representatives of our employer members. We oppose the proposed applications before the FWC to reduce Sunday penalty rates.

CCER is a not for profit organisation established by the Bishops of New South Wales (NSW) and the Australian Capital Territory (ACT) to advise and represent the interests of Catholic employers in NSW and the ACT on a broad range of employment relations and human resource issues. CCER also advocates on behalf of its members within the context of Catholic social teaching.

CCER works with employers across a number of sectors: Catholic independent and systemic schools; social services agencies, including aged care, disability support, health facilities and children's services; and religious congregations, parishes, chanceries and other Diocesan employers across NSW and the ACT.

ACCER is an agency of the Australian Catholic Bishops Conference (ACBC), which provides the Bishops with advice on employment relations issues. One of its principal activities has been the advocacy of adequate safety net wages for low paid workers. The Catholic Church employs over 180,000 employees through its many agencies across Australia. ACCER's advocacy is informed by the Church's experience as a major employer and as a major supplier of services in health, aged care, education and welfare throughout Australia. However, its advocacy on workplace relations issues is based on concern for the well being of workers, especially low paid workers and low income working families, as well as Catholic social teaching on work and the employment relationship.

Catholic social teaching places great emphasis on the right of workers to wages that will support themselves and their families at a decent standard of living, and in particular, that work which pays a decent wage will promote proper care of children, family stability and social inclusion.

The application of Catholic social teaching to work and the employment relations framework has been extensively considered by the ACBC. The 2005 Bishops' Statement outlines key workplace relations principles and concludes that it is vitally important as a matter of social justice that the burden of adjustment is not borne disproportionately by one part of the community, in particular the low paid and vulnerable workers. Changes must be pursued in ways that are fair and equitable to society as a whole.¹

In its detailed consideration of workplace relations from a Catholic perspective, ACCER notes that the Catholic Church's teachings recognise and support a proper balance between the rights and responsibilities of employers and workers:

*.....jobs alone are not sufficient to achieve social justice. There must be more, including the rights to adequate wages and job security.....there are other rights that flow from the performance of work; such as the rights to protection against unfair bargains, participation in unions, adequate rest and leisure, decent work and safe working conditions.*²

¹ [2005] Australian Catholic Bishops Conference, *The Bishops' Statement of 25 November 2005*

² [2007] ACCER *Workplace Relations: A Catholic Perspective*

EXECUTIVE SUMMARY

The FWC Penalty Rates Case arises from employer applications to vary specific awards in the retail and hospitality sectors to reduce penalty rates. The applications were made during the four yearly review of modern awards and have subsequently been dealt with as a common issue by a specially constituted Full Bench. Broadly, the applications seek to reduce Sunday penalty rates, in some cases by aligning them with the Saturday rates, and to reduce penalty rates paid on public holidays. Some applications also seek to reduce the applicable Saturday rate.

ACCER and CCER also note the recent recommendations made by the Productivity Commission (PC) that the FWC should, as part of its current award review process:

- set Sunday penalty rates that are not part of overtime or shift work at the higher of 125% and the existing Saturday award rate for permanent employees in the hospitality, entertainment, retail, restaurant and cafe industries.
- set weekend penalty rates to achieve greater consistency between the above industries, but without the expectation of a single rate across all of them.
- investigate whether weekend penalty rates for casuals in these industries should be set so that casual penalty rates on weekends would be the sum of the casual loading and the revised penalty rates applying to permanent employees, with the principle being that there should be a clear rationale for departing from this.
- provide one year's notice before these changes are made.³

ACCER and CCER do not support the PC recommendations to reduce Sunday penalty rates in the hospitality, entertainment, retail, restaurants and cafe industries or to provide greater consistency in weekend rates in those industries where that would result in rate reductions. We do not support the requirement for the FWC to implement the reductions through the award review process.

ACCER and CCER oppose the applications in the Penalty Rates Case to vary specific awards in the retail and hospitality sectors to reduce penalty rates, in particular reductions to Sunday rates.

ACCER and CCER reject legislative and other attempts to abolish or reduce weekend penalty rates due to concerns about the negative impact on the incomes of vulnerable workers and the detrimental impact of unsociable working hours on rest, recreation, and family time.

Around one third of Australian workers are required to work weekends and regularly miss important family engagements, social occasions and sporting events. In the retail and hospitality sectors the proportion is much higher with 72% of workers in the accommodation and food services sector and 56% of workers in the retail sector working on weekends.

These are also the sectors with the largest number of low paid, award reliant employees. Reducing Sunday penalty rates will disproportionately affect minimum wage earners, who rely on penalty rates to protect their living standards. For many low paid workers, Sunday

³ [2015] Productivity Commission Report *Workplace Relations Framework* Volume 1, p54

penalty rates are an *inherent* part of the safety net and any reduction would have a major and often devastating impact on these workers and their families.

Reductions will also have flow on effects of reducing workers' disposable income with adverse consequences on their ability to purchase goods and services from other businesses affecting the wider economy. This impact would be particularly felt in regional areas.

It is fundamentally inequitable to treat the retail and hospitality industries differently to others such as nursing, aged care, police, and other essential services workers, where existing penalty rates will and should continue to be paid. We oppose a two-tier system that unfairly targets Australia's lowest paid workers because of lower skills, and historical industry differences.

Further, arguments that a reduction in Sunday penalty rates would result in higher demand for labour and increased retail and hospitality job opportunities particularly for young people are not convincing. There is no reliable evidence or economic analysis that removing penalty rates will boost employment and job creation put before the FWC to date.

Rest, recreation and family time is valued and work in unsociable hours precludes workers from these opportunities. Those who argue for rate reductions argue that Sunday hours are of equal value to Saturday hours, however Sunday retains special status as a day preserved for family time, particularly for parents with children. Research continues to show that quality time is essential to keeping families strong, a key value of the Catholic Church.

It is widely acknowledged that Sunday employment more adversely affects outside activities and relationships compared with Saturday work, which in our view undermines the proposition that the penalty paid for working such time on Sunday should be reduced or aligned with the Saturday rate.

ACCER and CCER accept that a wide range of work in unsocial hours is, and will continue to be, necessary to meet the community's economic and social needs. However, many workers have no real 'choice' to not work weekends because they need penalty rates income to survive. By lowering Sunday penalty rates their 'choice' would be to work additional hours to earn the same income.

In our view, a penalty should continue to be paid for the family time that is sacrificed by those workers and not reduced. While penalty rates cannot remedy the negative impacts of working unsociable hours, they can provide fair and just compensation for some of them.

If the premium of paying penalty rates for weekend work is reduced, there will be further encroachment on time spent with family and friends.

Further, if the trade off for this detriment, is the promise by employers of a boost to employment and more job creation, it is not evident from the data they have provided to date.

In accordance with the explicit legislative protections for a fair and relevant minimum safety net of terms and conditions, and the evident disabilities associated with working unsociable hours, penalty rates should be protected, not reduced.

THE CASE AGAINST REDUCING SUNDAY PENALTY RATES

ACCER and CCER reject legislative and other attempts to abolish or reduce weekend penalty rates due to concerns about the negative impact on the incomes of vulnerable workers and the detrimental impact of unsociable working hours on rest, recreation, and family time for a number of compelling reasons:

Vulnerable workers will have their pay cut

ACCER and CCER are very concerned that reducing penalty rates on Sundays in the hospitality and retail industries will disproportionately affect minimum wage earners, who work non-standard hours in precarious and low paid jobs and rely on penalty rates to protect their living standards.

The majority of employees that would be affected by the proposed reductions are low paid, women and young people working weekends. ABS data shows that 72% of workers in the accommodation and food services sector and 56% of workers in the retail sector work on weekends, compared to 34.5% of workers across the economy.⁴

Younger workers aged 18 – 24 are more likely to work on weekends in these industries. These are also the sectors with the largest number of low paid, award reliant employees (17.2% of retail employees and 17% of accommodation and food services employees). Average weekly total cash earnings (including applicable penalty rates) were \$553.70 for retail employees and \$519.20 for employees in accommodation and food services.⁵

A reduction in Sunday penalties would have a significant impact on the wages of these workers. In 2012 the Department of Education, Employment and Workplace Relations estimated that if restaurant and catering and retail businesses were exempt from paying penalty rates, the average casual non-managerial employee would lose income of \$58 (11%) a week in restaurants, \$47 (9%) in hospitality, \$37 (6%) in fast food and \$29 (6%) in retail. This would affect some 200,000 typically award reliant and low paid employees.⁶

The PC has acknowledged the impact of its recommendation to reduce the Sunday rate to the Saturday rate in these industries calculating a wage reduction of 17% for restaurant industry employees and 37.5% in retail.⁷ For low paid workers and their families a pay cut of this magnitude will hurt their living standards.

The PC has also noted most employees facing reduced earnings will be unlikely to obtain enough additional hours to offset the earnings effects of lower wage rates. In ACCER and CCER's view even if employees were willing and able to work extra hours to avoid a net pay cut, it is fundamentally inequitable that they would need to do so.

To further compound the problem, there is evidence of widespread non-compliance with award rates of pay and penalty rates by unscrupulous employers in the retail and hospitality

⁴ [2009] Australian Bureau of Statistics 4102.0 *Australian Social Trends, Patterns in Work* December <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features50Dec+2009>

⁵ [2014] Australian Bureau of Statistics Cat 6306.0 *Employee Earnings and Hours*

⁶ [2012] Department of Education, Employment and Workplace Relations Submission, *Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012*, page 11

⁷ [2015] Productivity Commission *Draft Report Workplace Relations Framework*, p516

sectors. Overseas students are particularly vulnerable with a high profile example of exploitation including 7-Eleven. A recent survey of Chinese students mostly working in restaurants, cafes, retail and fast food, found 73% were paid less than the National Minimum Wage (NMW) rate with more than a third paid \$12 an hour or less, well below the relevant award and applicable penalty rate.⁸

Penalty rates are an inherent part of the safety net

ACCER and CCER disagree with arguments that Sunday rates appear to extend beyond the 'safety net' role of the award system. Clearly, for many low paid workers Sunday penalty rates are an *inherent* part of the safety net. Any reduction or loss of penalty rates would have a major and often devastating impact on many low paid workers and their families. This will compound the situation where the NMW and other award rates provide only poverty wages.

The large majority of safety net workers who are mostly in the lower wage award classifications are falling behind community wide average wage movements. While average weekly ordinary time earnings (AWOTE) have increased by 80% in the 13 years prior to November 2013, the NMW has only increased by 55.4% over the same period. Percentage declines of similar magnitude have also occurred in award minimum rates relative to AWOTE.⁹

Similarly, the fall in the relative value of minimum wages has caused working families to fall below rising poverty lines becoming, in effect, the '*working poor*'. ACCER has calculated that over the ten years to January 2014 a NMW dependent family of four fell from 3.3% below, to 10% below, the 60% relative poverty line (determined by reference to ABS median disposable income measures).¹⁰

Poverty is rising among low paid workers with the Australian Council of Social Services reporting that 20.5% of those living in poverty were in a household where there was at least one full time worker, 13.5% a part time worker and 5.9% were unemployed (ACOSS 2012).¹¹

Flow on effects of reducing disposable income

Reducing Sunday penalty rates will punish some of Australia's most vulnerable workers. It will also impact on consumption as reductions in these workers' incomes will have adverse consequences on their ability to purchase goods and services from other businesses.

Research estimates the impacts of penalty rate reductions in the retail and hospitality industries in rural Australia on workers' earnings and the effect on local economies as disposable income is reduced. About 18 per cent of the rural workforce is employed in the retail and hospitality sectors (about 500,000 people).

The research calculates that a partial reduction of penalty rates (including a halving of the applicable Sunday rates) would result in workers losing between \$371 – \$692 million in wages per annum. There would be a corresponding decline in discretionary spending in local economies of between \$175 - \$343.5 million per annum. The report identifies that ironically

⁸ [2016] Clibborn S, *Degrees of exploitation: Why international students in Australia are underpaid*, presentation to AIRAANZ conference

⁹ [2014] Lawrence B, *Wage justice and the challenge of globalisation :a Catholic perspective*, *Gesher* journal, The Council of Christians and Jews Victoria Inc

¹⁰ [2014] ACCER *After a century the minimum wage system abandons families*, Briefing Paper (p 51)

¹¹ [2012] Australian Council of Social Services, *Poverty in Australia* ACOSS Paper 194 [page 24]

the greatest detriment will be on local businesses in the retail and hospitality sectors.¹² Similar reductions in consumption would be expected across the economy in cities and suburbs affecting business profitability, confidence, jobs and growth.

Two tier system is inequitable

It is fundamentally inequitable to treat the retail and hospitality industries differently to others such as nursing, aged care, police, and other essential services workers, where existing penalty rates will and should continue to be paid. ACCER and CCER do not accept the PC and others' view that it is justifiable to pay penalty rates as they are currently constructed in these industries but not in others. We oppose a two-tier system that unfairly targets Australia's lowest paid workers because of lower skills, and historical industry differences.

In ACCER and CCER's view, the extension of trading hours, largely in response to consumer demand, does not diminish the unsociability of weekend work for retail or hospitality workers when compared to workers in other industries, regardless of the historical differences in weekend demand.

Employers assert that community attitudes on penalty rates for Sundays have changed, but this view is not supported by public sentiment. An Essential Media poll found that 68% of voters oppose cutting weekend and public holiday penalty rates for hospitality and retail workers compared to 23% in support.¹³ Even if community expectations are changing about weekend access to consumer services there is no change in community expectations about compensating the workers who deliver those consumer services.

While the current award applications before the FWC are confined to the retail and hospitality industries, ACCER and CCER are concerned that a precedent set for these industries would eventually '*set the scene*' for reductions in penalty rates for the rest of the workforce. This is of great concern when Australia already faces growing labour shortages in the health care, aged and disability care sectors and can ill afford to make these sectors less attractive to prospective employees. It is of particular concern to the Catholic Church as a major provider of health care, residential aged care, social and community services where employees are required to provide care 24 hours, 7 days per week.

Recent research illustrates the importance of penalty rates to the incomes of nurses, midwives and aged care workers, comprising 20% of earnings, on average. Any cuts to penalty rates would significantly reduce these workers' take home pay, negatively impact the local economies in which they work and live and exacerbate shortages in these skilled occupations.¹⁴

Job creation arguments are not convincing

ACCER and CCER reject the arguments that a reduction in Sunday penalty rates would result in higher demand for labour and increased job opportunities particularly for young people in these industry sectors. The PC's draft report stated that '*excessive penalty rates for Sundays reduce hours worked, mean unemployment is higher than it needs to be, and reduce options for business and consumers*'. ...'*As there is a significant differential between*

¹² [2015] McKell Institute *Who loses when penalty rates are cut?*

¹³ [2015] Essential Media Report, *Cutting Penalty Rates*, 13 January <http://www.essentialvision.com.au/cutting-penalty-rates>

¹⁴ [2016] McKell Institute, *The Importance of Penalty Rates for Our Health Workforce*

*Saturday and Sunday penalty rates, their greater alignment is likely to have sizeable employment effects.*¹⁵

Not all economists agree with this proposition. For example, Ross Gittins has stated the argument that weekend penalty rate reductions would have great economic benefits is ‘*fallacious*’. There appears to be no real evidence that reductions in Sunday rates will translate to increased sales and therefore staffing levels – as opposed to just increasing profit margins. Some retail and hospitality businesses would not open for longer hours on Sundays, simply increasing their profit by paying lower wages, with no increase in employment opportunities.

Even assuming that many businesses did open longer, increased custom (theoretically creating more jobs) would depend on consumers spending more on Sundays. In light of constraints on consumers’ total discretionary spending, an increase in Sunday sales may however simply occur at the cost of reduced consumer spending at other times of the week, and therefore at the expense of other businesses (and jobs). The potential outcome may be the same number of sales spread over longer opening hours, which, while more convenient for consumers, is unlikely to increase the total number of jobs across the economy.¹⁶

A recent survey of 1000 restaurant and cafes indicated that while 52% said they would employ more staff if penalty rates were reduced, only 10% of respondents are now closed on Sundays. Of this group, 40% stated they would not be more likely to open on Sundays if penalty rates were reduced. Of the 90% that remain open on Sundays, 51% stated they do so because it is profitable. Less than 25% stated that opening on Sundays (and consequently paying the applicable penalty rate) is reducing their profits.¹⁷

It is ACCER and CCER’s view that the significant evidentiary gap identified by the FWC in 2013 that ‘*There is also no reliable evidence about the impact of the existing differential Saturday and Sunday penalties upon employment patterns, operational decisions and business performance*’ remains the case, notwithstanding the claims of industry employers that they would put on additional staff if rates were reduced.¹⁸

In its restaurant industry award decision the FWC concluded Sunday penalty rates have some effect, but not a significant effect, on employment on Sundays.¹⁹ In ACCER and CCER’s view there is no compelling evidence to the contrary. Further, as noted above, most employees facing reduced earnings will be in the position of seeking to work additional hours to offset the earnings effects of lower wage rates thereby competing with unemployed job seekers.

In any event, even if the proposition that Sunday penalty rate reductions would assist job creation is accepted, it is a fundamental Catholic principle that it is not *morally* acceptable to reduce unemployment or underemployment by lowering the wages and conditions of vulnerable employees and the living standards of their families.²⁰ While measures to

¹⁵ [2015] Productivity Commission *Draft Report Workplace Relations Framework*, p483, 522

¹⁶ [2015] Gittins, R, *Don't be sure lower penalties mean more jobs* 10 August <http://www.smh.com.au/business/dont-be-sure-lower-penalties-mean-more-jobs-20150806-giti4j.html>

¹⁷ [2015] Restaurant and Catering Industry Association, *The effect of penalty rates on staffing, opening hours and profitability in Australian restaurants and cafes*, Jetty Research

¹⁸ [2013] FWCFB 1635 *Transitional Review Penalty Rates Decision* [para 234]

¹⁹ [2014] FWCFB 1996 *Restaurant Industry Award – Appeal* [para 139]

²⁰ [2005] Australian Catholic Bishops Conference, *The Bishops’ Statement of 25 November 2005*

promote greater employment are of critical importance, other strategies are required to assist the unemployed.

Sundays are still 'special' - for families and leisure

ACCER and CCER disagree with the proposition that the concept of compensating employees by paying 'premium' rates for hours worked outside the standard Monday to Friday working week is outdated due to the transition to a 24/7 economy, changing social norms and claims that weekends are no longer special days for rest, family and social time or religious observance.²¹

While ACCER and CCER note the PC and others' observations that, among other factors, one of the likely contributors to changing social norms and attitudes to business activity on weekends is a reduction in religious observance, research continues to show that quality time is essential to keeping families strong, a key value of the Catholic Church.

Weekend work has nearly trebled over the past 20 years, from 12 per cent of workers in 1993 to roughly a third today with 30% of single job holders and 60% of multiple job holders working weekdays and weekends.²² As noted above, in the retail and hospitality sectors the proportion is much higher.

Research indicates that compared to work at other unsociable times including night and evening shifts, weekend employment is associated with the most interference on family activities.²³

Weekend workers regularly miss important family engagements, social occasions and sporting and recreation activities and church gatherings. These events are important for rest, recuperation, and cementing social ties, which have positive effects on workers' health, well-being, and social inclusion. In particular, research suggests that shared leisure time is key to positive relationships and good family functioning with couples' shared leisure time important for marriage quality.²⁴

Those who argue for rate reductions argue that Sunday hours are of equal value to Saturday hours, however Sunday retains special status as a day preserved for family time, particularly for parents with children.²⁵ A 2014 University of New South Wales study found that weekend work is most disruptive to family time with particular impacts on parents who work on Sundays losing time with their spouse and children. In most cases workers do not recoup this loss of prized weekend time at other times of the week.²⁶

Loss of family time is of particular concern to the Church as identified by the Australian Catholic Bishops Conference:

Time together as a family – for mutual care and relaxation – should be regarded as a right. Pope Benedict XVI refers to this right as the 'raw material' of life, which is essential for the

²¹ [2015] Productivity Commission Report *Workplace Relations Framework* Chapter 11

²² [2012] Australian Bureau of Statistics 6342.0 - *Working Time Arrangements, Australia*, November

²³ [2011] Martin, J. E., Wittmer, J. L.-S., & Lelchok, A. M, *Attitudes towards days worked where Sundays are scheduled*. Human Relations [pp 64, 901–926]

²⁴ [2007] Shepanski, P., & Diamond, M. *An unexpected tragedy: Evidence for the connection between working patterns and family breakdown in Australia* Sydney: Relationships Forum Australia

²⁵ [2005] Bittman, M, *Sunday working and family time* Labour & Industry [pp16, 59–83]

²⁶ [2014] Craig, L *Weekend Work and Leisure Time With Family and Friends: Who Misses Out?* University of New South Wales, Social Policy Research Centre, Journal of Marriage and Family

loving attention of children, but which for many people seems ever more scarce and barely enough to meet individual needs. The demands of work have increased and placed real pressures on family time. ²⁷

Despite the 24/7 economy, we live in a community and while the notion of the Sabbath may have lost currency in a secular world, there is a continued need for a day of rest, to play, to socialise, to worship.

The FWC has previously recognised the particular impact of working on Sunday rejecting the general proposition that the level of inconvenience and disability for working on Sundays is no higher than that for Saturdays stating, ‘... *Working on Sundays involves a loss of a day of family time and personal interaction upon which special emphasis is placed by Australian society*’.²⁸ ACCER and CCER agree with this view.

The PC has also acknowledged ‘*Sunday employment does more adversely affect outside activities and relationships compared with Saturday work*’. In ACCER and CCER’s view, if leisure or family time on Sunday is more highly regarded than on Saturday, this undermines the proposition that the penalty paid for working such time on Sunday should be reduced or aligned with the Saturday rate.

It is ACCER and CCER’s view that an appropriate penalty should continue to be paid for the family time that is sacrificed by those workers who work on weekends, and not reduced. While penalty rates cannot remedy the negative impacts of working unsociable hours, they can and should provide fair and just compensation for some of the detriment.

No real ‘choice’ to not work weekends

While ACCER and CCER acknowledge that for some workers, such as students or carers, weekend work is convenient and desirable, for many other workers it is a necessity rather than a real choice. Even for many students the ‘choice’ to work weekends is illusory because they need this income to survive, particularly while in tertiary education. By lowering Sunday penalty rates their ‘choice’ would be to work additional hours to earn the same income. The fact that some of these employees only work these unsociable hours ‘*in the earlier years of their working lives and may have high lifetime expected incomes*’ as asserted by the PC in its draft report is also irrelevant, particularly if they cannot support themselves to study.

The ‘choice’ to work unsociable hours is largely driven by the financial incentive of penalty rates with women, workers with combined household incomes below \$30,000 and rural and regional employees most financially vulnerable to their removal. Research indicates more than 72% of those employees relying on penalty rates for household expenses would stop working Saturdays, Sundays and weeknights if penalties were removed. Those with household incomes below \$30,000 and most reliant on penalty rates are also the least likely to continue working these hours if a wage premium was not offered. This group has indicated they would seek to move to other work that meets their financial needs. ²⁹

This apparent alternative of finding a different job is difficult and a daunting prospect even in positive economic times. Even allowing for the PC’s recommendation that the FWC provide

²⁷ [2012] Australian Catholic Bishops Conference *Social Justice Statement 2012 – 2013: The Gift of Family in Difficult Times* p4

²⁸ [2014] FWBFB 1996 *Restaurant Industry Award – Appeal* [para 154]

²⁹ [2014] Daly T, *Evenings, nights and weekends: working unsocial hours and penalty rates* Centre for Work + Life University of South Australia

12 months advance notice of a change to Sunday rates in the retail and hospitality industries, it is likely that many affected employees would simply have to 'accept' the cut in pay (and consequently have no real choice but to work more unsociable hours to earn the same income).

Penalty rates should not be reduced

Support for penalty rates is consistent with ACCER and CCER's support for the explicit protection in the regulatory framework in section 134 (da) of the *Fair Work Act 2009* which requires the FWC to ensure that modern awards, together with National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions and take into account:

the need to provide additional remuneration for:

- (i) employees working overtime; or*
- (ii) employees working unsocial, irregular or unpredictable hours; or*
- (iii) employees working on weekends or public holidays; or*
- (iv) employees working shifts;*

This requirement '*recognises the need to fairly compensate employees who work long, irregular, unsocial hours, or hours that could reasonably be expected to impact their work/life balance and enjoyment of life outside of work.*'³⁰

Penalty rates are '*premiums*' paid to workers for working in unsocial hours. The Australian minimum wage system has provided compensation for this kind of work in the form of special payments, reflecting the actual incidence of the detriment, rather than compensation being rolled into the wage rates. This provides equity as between employers and workers within the workplace and an industry: by compensating the workers who suffer the detriment and by requiring only the employers who operate within the relevant hours to pay the premium.

Weekends are not ordinary working days and that work on those days is work in unsocial hours and this is so even if some occupations (such as policing and nursing) have to work on weekends. Similar considerations also apply in relation to shift work and work on public holidays.

The applications to reduce weekend penalty rates in the hospitality and retail services:

- target the lowest paid and most vulnerable workers
- fail to recognise the detrimental impact of unsocial working hours, particularly on Sundays
- are unfair and discriminatory
- are not supported by evidence or economic analysis
- propose a morally unacceptable means of promoting employment opportunities.

The FWC should reject the applications and not reduce penalty rates.

³⁰ [2013], Fair Work Amendment Bill *Revised Explanatory Memorandum*