

# Submission

to

Senate Committee Inquiry

## Inquiry into Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012

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## Terms of Reference

1. The Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 would amend the Fair Work Act 2009 to provide that a modern award must not require a business employing fewer than 20 full time employees in the restaurant and catering or retail industries to pay penalty rates to an employee unless they have worked more than 10 hours in a 24 hour period, or more than 38 hours total, in that week.

## Introduction

2. The Australian Services Union [ASU] is one of Australia's largest Unions, representing approximately 120,000 employees.
3. The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.
4. Today, the ASU's members work in a wide variety of industries and occupations and especially in the following industries and occupations:
  - o Local government (both blue and white collar employment)
  - o Social and community services
  - o Transport, including passenger air and rail transport, road, rail and air freight transport
  - o Clerical and administrative employees in commerce and industry generally
  - o Call centres
  - o Electricity generation, transmission and distribution

- Water industry
  - Higher education (Queensland and SA)
5. The ASU has members in every State and Territory of Australia, as well as in most regional centres.
  6. The ASU welcomes the opportunity to participate in the Senate Committee Inquiry into Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012.
  7. The ASU supports the ACTU submission to the Inquiry and in particular supports the following issues:
    - a. The Bill is unsupported by evidence that indicates how penalty rates payable in the above industries have resulted in fewer staff being employed or businesses closing. At the expense of the low paid, the Bill will likely increase the profit margins of small businesses
    - b. The real effect of the Bill will slash the take-home wages of over 500,000 employees in small businesses. These employees rely upon minimum award rates and penalty rates to make ends meet.
    - c. The Bill targets employees of small business which disproportionately employ low-paid, award reliant workers.
    - d. The Bill ignores the fact that penalty rates are designed to compensate workers for working unsocial hours and sacrificing family, social time and one's health.
  8. The ASU has an interest in the Bill to the extent that both the *General Retail Industry Award 2010* and the *Hospitality Industry (General) Award 2010* cover clerical/administrative employees in their respective industries.

9. This Bill fails to achieve the modern award objective to ensure “*a fair and relevant minimum safety net of terms and conditions*”, taking into account a range of considerations which include “*relative living standards and the need of the low paid*”.
10. The ASU believes penalty rates are a matter for the independent umpire, Fair Work Australia. The determination of penalty rates requires discretionary consideration based on the nature of work being performed and the circumstances under which it is performed.
11. As part to the review into modern awards FWA is currently reviewing penalty rates in the retail, hospitality, fast food, restaurant, hair & beauty and banking industries. A decision is yet to be handed down.
12. Penalty rates make up a significant component of remuneration of the low paid, by reducing penalty rates remuneration for these workers would result in a disproportionate decrease.
13. Whilst this Bill seeks to remove penalty rates for small businesses in the restaurant and catering or retail industries the ASU is concerned if this Bill succeeds it will undermine the weekend penalty rate system across all industries, including medium and large businesses.
14. Specific industries of concern to the ASU include: local government, airlines, information technology, call centres and the social and community service sector where employees often work 24hours around the clock.
15. The Bill will erode workers’ rights to higher pay packets for working weekends. Penalty rates recognise working weekends and unsociable hours, when many of the community (including their families) are at leisure or asleep.

16. Weekends are an important time to spend with families and friends and to enjoy recreational activities, penalty rates reflect this. Thousands of workers (especially young workers and the low paid) depend on penalty rates to help them meet ends meet and provide them with a sustainable income.
  
17. In the Explanatory Memorandum it states:  
  
*“This Bill also maintains the original intention of penalty rates, which is to financially recognise work performed above and beyond the usual hours of employment”*  
  
The ASU does not believe a 10 hour working day (before penalty rates apply) to be usual hours of employment.
  
18. If passed this Bill would create a two tier wage system where two people doing the same job would be paid a different amount of money depending on the size of the business.

## **Conclusion and Recommendation**

19. As per paragraph 11 of this submission the ASU recommends the award review currently being conducted by Fair Work Australia be allowed to continue independent of a single politician’s political agenda.
  
20. The ASU submits the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill must be wholly rejected.