

29 June 2015

Justice Iain JK Ross
President
Fair Work Commission
Level 4, 11 Exhibition Street
Melbourne VIC 3001
c/o
The Associate to his Honour, Justice Ross
Via email: chambers.ross.j@fwc.gov.au
cc: amod@fwc.gov.au

Dear President Ross,

Re: 4 YEARLY REVIEW OF MODERN AWARDS – PENALTY RATES
AM2014/305

1. CCIQ is Queensland's peak industry organisation for small and medium businesses. We represent over 25,000 businesses on local, state, and federal issues that matter to them.
2. Our guiding focus is to develop and advocate policies that are in the best interests of Queensland businesses, the Queensland economy, and the Queensland community.
3. CCIQ welcomes the opportunity to provide a submission to the Fair Work Commission (the Commission) as part of the 4 yearly review of modern awards being conducted pursuant to section 156 of the *Fair Work Act 2009* (Cth) (the Act).
4. Specifically, CCIQ wishes to provide high-level commentary on the impact of penalty rates on the hospitality and retail sectors in Queensland and requests the Commission view this submission as a formal filing of common evidence with respect to penalty rates in relevant retail and hospitality awards.

5. CCIQ wishes to indicate that unfortunately we did not provide the Commission with notice of our intention to submit survey evidence in relation to the hospitality and retail group on 25 May 2015 as per the Commission's directions. We apologise for this departure from the directions on the basis that our work on this issue occurred in February/March 2015.
6. CCIQ requests the Commission note that our organisation, in collaboration with Clubs Queensland, the Franchise Council of Australia, Queensland Hotels Association, Queensland Tourism Industry Council and Motor Trades Association, surveyed over 1,000 Queensland businesses to assess the impact of the Fair Work laws, including penalty rates provisions, between 11 February and 13 March 2015.
7. To this end, this submission includes common material with respect to the impact of penalty rates on the hospitality and retail sectors as per the aforementioned survey results, and outlines survey evidence including information as to the persons surveyed, the subject matter(s) of the survey, the size and type of survey in the methodology section of this submission as per the Commission's request.
8. In addition to the survey, CCIQ hosted an Industry Roundtable to discuss how, and in what ways, the current workplace relations framework impacted on their respective memberships, particularly with respect to the impact of penalty rates on sectors that operate in a 24/7 economy.
9. This collaborative consultation amongst Queensland's leading industry associations resulted in a richness of qualitative data that forms the foundation of the contents of this submission.
10. Further to this, CCIQ hosted several consultative forums across regional Queensland, meeting with small business owners and representatives in the Wide Bay region, the Sunshine Coast, Gold Coast, Cairns and Townsville, in order to document their insight and experiences regarding the current penalty rates regime.
11. The cumulative findings from the Workplace Relations Survey, the Queensland Industry Roundtable, and extensive small business engagement in the regions identified penalty rates as one of five top issues for Queensland businesses in relation to workplace relations.
12. CCIQ argues that while some aspects of the workplace relations system require subtle adaptation to contemporary workplaces, other aspects of the framework such as penalty rates need to be more pragmatic in order to effectively deal with emerging economic, social, and demographic trends facing Australia's working landscape.

13. To illustrate, the labour market in Australia has most recently seen a sharp rise in youth unemployment and shifts in employment demand, such as reduced market needs for low and medium skilled workers. Other noteworthy shifts in workplace trends include the continual adjustment of notions of the 'traditional workplace', and an expanding aging population. All this is taking place alongside greater reliance on technology and increased global interconnectedness, which is invariably changing the characteristics of traditional service delivery.
14. CCIQ believes that these changes, and others, call for a significant re-think as to how Australia's penalty rates regime can best serve the needs of employers, employees, and the broader economy into the future.
15. Most importantly however, CCIQ encourages the Commission to consider the stark correlation between the rigidities in the current workplace relations system and youth unemployment figures when deliberating on variations to penalty rates with respect to retail and hospitality. At present, Queensland's youth unemployment (14.3 per cent) sits at a rate double that of adults (6.5 per cent).
16. Since the introduction of the Fair Work Act, the rate of inactive young people in the labour market has reached historical highs. Workplace reforms such as increased minimum work engagement periods and ongoing increases in junior rates of pay act as examples of award rate disincentives discouraging businesses from taking on young workers. Most importantly for this submission however, is that penalty rates are making employers cautious of taking on new employees, offering differing employment hours, and/or opening longer hours.
17. This worrying trend demonstrates the need for a national conversation about how to make it easier for business to employ. CCIQ believes this conversation can begin with Australia's national industrial tribunal, the Fair Work Commission, making sensible assessments as to the impact of penalty rates on small businesses across Queensland and indeed nationally.
18. The following submission contains a series of recommendations that reflect the changes Queensland employers have told CCIQ they want to see to the current penalty rates regime as it applies to retail and hospitality businesses.

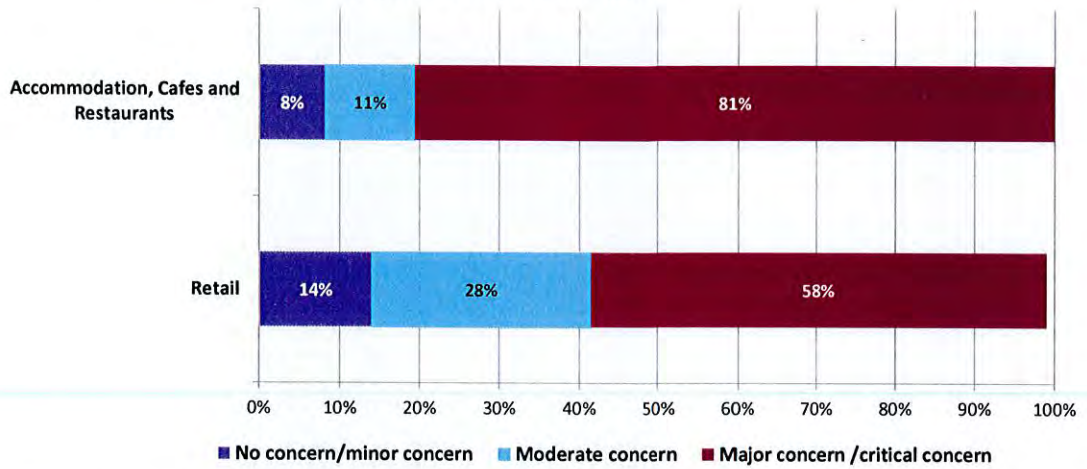
Penalty rates

19. Many Queensland employers have raised concerns regarding the impact of penalty rates and increased employer obligations surrounding allowances on the competitiveness and profitability of their business. These concerns emanate from businesses that operate seven days a week or outside of the traditional concept of 'normal trading hours' (9am to 5pm Monday to Friday), including the retail, tourism,

accommodation, hospitality and agricultural industries. Increased wage costs have resulted in businesses closing for longer periods or reducing employment hours, which have negative flow on effects for employees, communities and the economy.

20. Current Fair Work laws define shifts that attract penalty rates as 'unsocial' and those who work during such hours should be compensated accordingly. This claim is not only false, but makes broad assumptions about the nature of individual lifestyles and choices, whereby particular employees prefer to work during the evening or on weekends. Employees want flexibility too.
21. The policy behind penalty rates represents a failure to recognise the requirements of central industries for workable terms and conditions of employment. The current penalty rate regime inhibits economic growth by providing a disincentive to employers from having longer trading hours or offering staff additional hours.
22. This is of serious concern to businesses facing increased global competition including from online businesses that are accessible by consumers 24 hours a day, seven days a week. The current regime is also impacting on some businesses' ability to trade profitably at times when many consumers now prefer to shop, for example, later in the evenings or on Sundays.
23. While there have been legislative proposals to relax penalty rate requirements for industries for which extended hours are considered typical, such as in the retail and hospitality sectors, this approach does not account for the clear trend towards a general expansion in hours of operation and trading across a variety of industries.
24. CCIQ urges the Commission to utilise these factors as evidence in order to vary penalty rates in awards that cover the hospitality and retail sectors so as to allow for greater flexibility in such industries that operate for seven days a week or outside 'standard' trading hours.
25. With respect to our survey results, the penalty rates and overtime paid under the Fair Work laws continues to adversely impact Queensland businesses, especially those businesses in the hospitality and retail sectors. A significant proportion of businesses in the hospitality sector (81 per cent) and in the retail sector (58 per cent) indicated that penalty rates and public holiday entitlements are a major to critical cause for concern at the present time.

To what extent are penalty rates and public holiday entitlements are cause for concern at the present time?

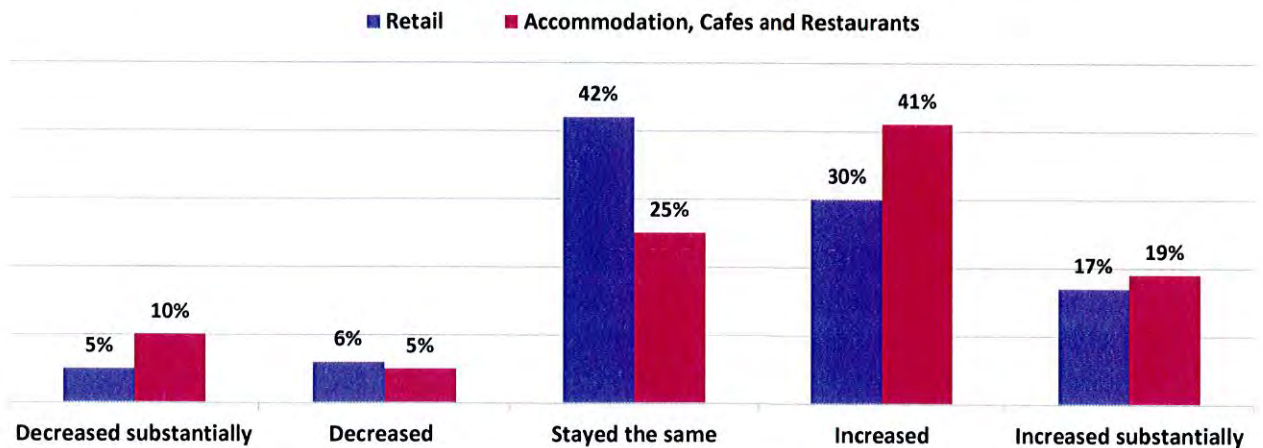


Source: Workplace Relations Survey – February 2015

Impact on hospitality and retail businesses

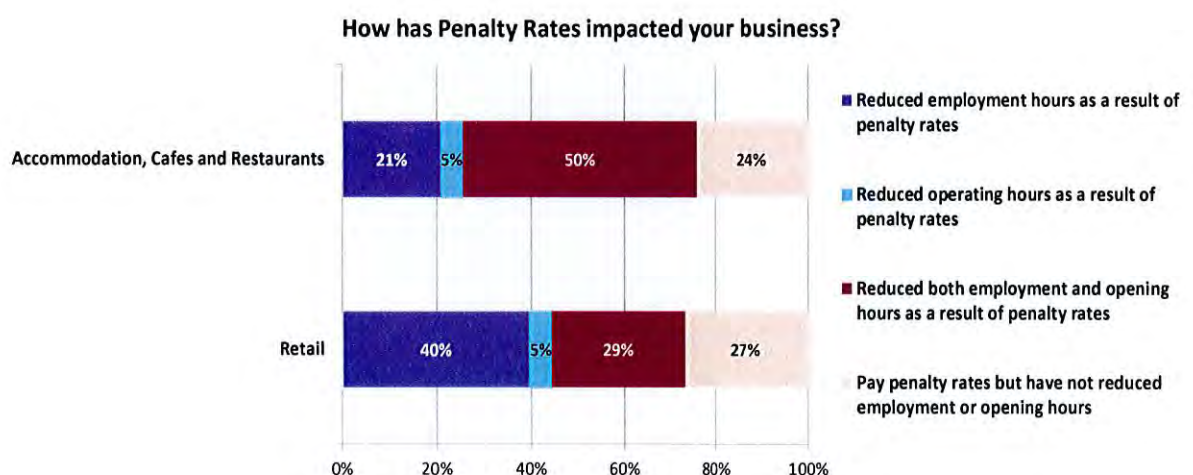
26. The survey results confirm that the impact of penalties and overtime paid is more acute for businesses in the hospitality and retail sectors. In particular, 60 per cent of hospitality businesses and 46 per cent of retail businesses indicated that penalties and overtime paid had increased or substantially increased as a result of the Fair Work Act and Modern Awards.

What impact has the Fair Work Act and Modern Awards had on your business in terms of Penalty Rates and Overtime paid?



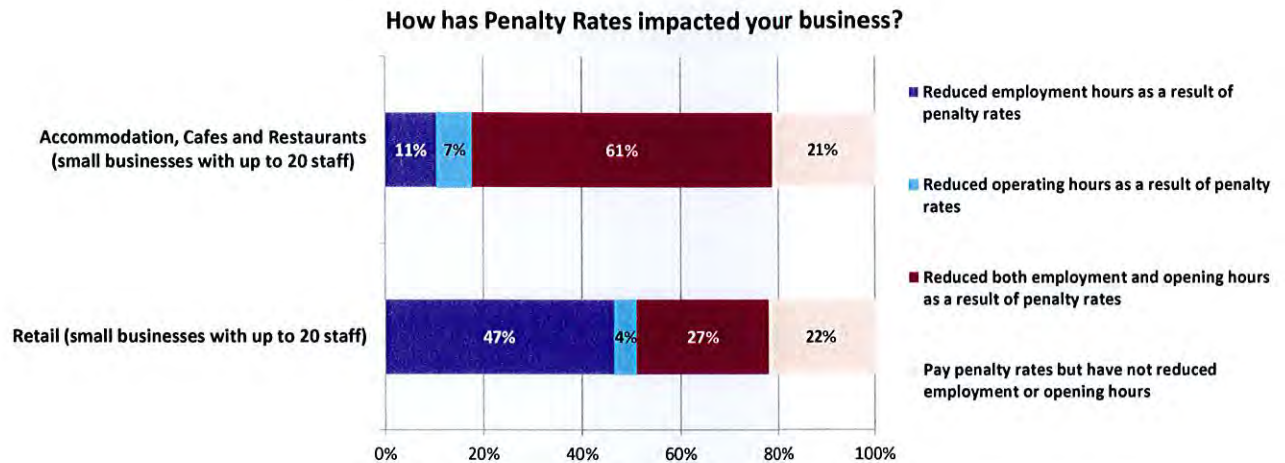
Source: Workplace Relations Survey – February 2015

27. When asked specifically about penalty rates, Queensland businesses in the hospitality and retail sectors indicated there have been negative impacts in terms of reduced operating hours and reduced employment.
28. The penalty rates system appears to influence employment decisions more so than business decisions about operating hours. Only 5 per cent of businesses in both the hospitality and retail sectors chose to reduce operating hours in response to penalty rates. As a consequence, businesses are forced into situations where they have insufficient staff to maintain customer service standards and/or scale to cover fixed operating expenses.



Source: Workplace Relations Survey – February 2015

29. The impacts of the current penalty rates system is further exacerbated when looking more closely at small businesses within the hospitality and retail sectors. The survey results show the majority of small businesses in the hospitality sector (79 per cent) and retail sector (78 per cent) reduced both operating hours and employment hours as a result of penalty rates.



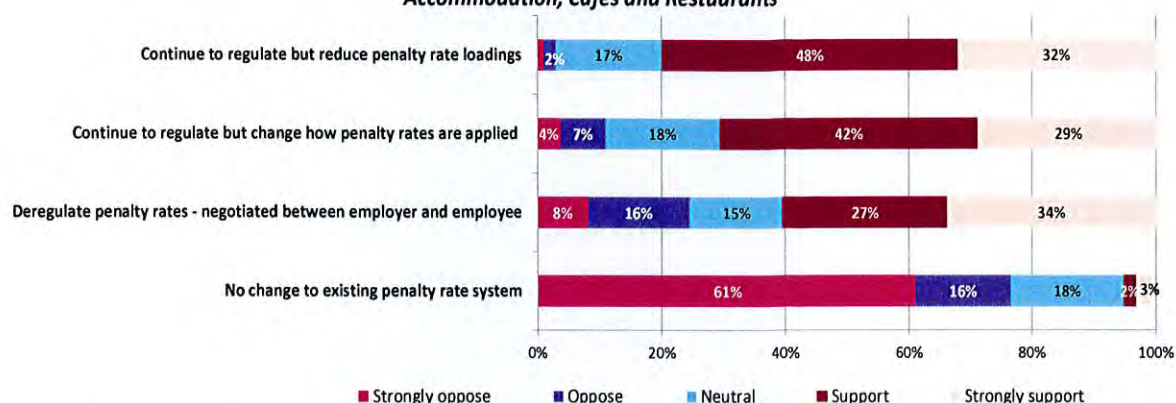
Source: Workplace Relations Survey – February 2015

30. Overall, the survey results confirm that the current system of penalty rates is preventing Queensland businesses in the hospitality and retail sectors from tailoring their staffing arrangements in response to the peak demand periods for their products and services. At the same time, this survey evidence conclusively demonstrates that overall employment hours are reduced to the direct detriment of existing potential employees including Queensland youth.

Reform options

31. There is a strong desire for reform, with only 5 per cent of hospitality businesses and 6 per cent of retail businesses indicating support for retaining the current penalty rates system.
32. The majority of Queensland businesses in the hospitality sector would support or strongly support (80 per cent) the continued regulation of penalty rates but with reduced loadings. This reform option is also preferred by 70 per cent of retail businesses. Reducing penalty rate loadings can be easily implemented and would create an incentive for businesses to increase employment hours.

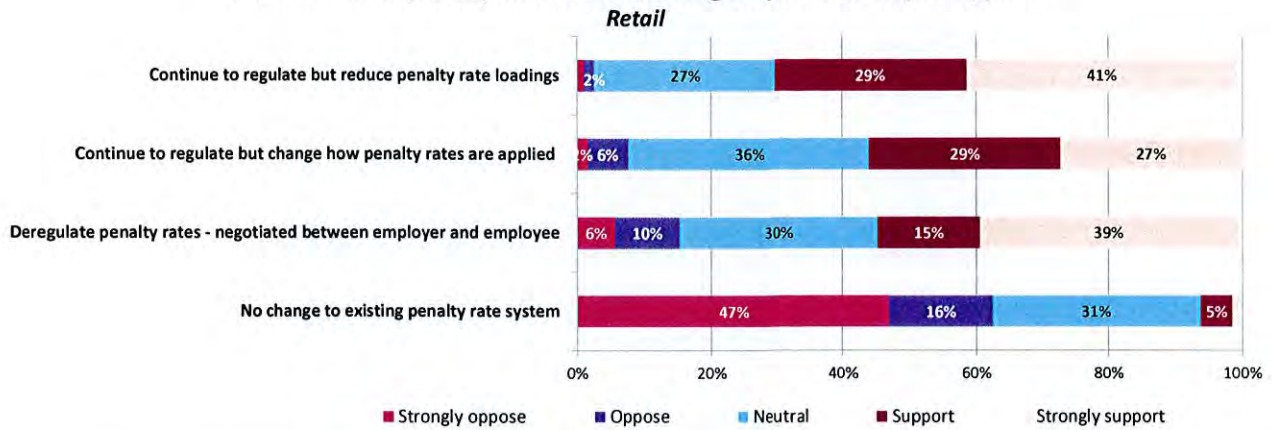
**In terms of Penalty Rates, which of the following are you most likely to support?
Accommodation, Cafes and Restuarants**



Source: Workplace Relations Survey – February 2015

33. Changing how penalty rates are applied is supported by 71 per cent of businesses in the hospitality sector and 56 per cent of businesses in the retail sector. CCIQ has previously called for the first five shifts in a given week to be penalty rate free with only shifts six or more attracting penalty rates. While this option was not specifically canvassed in the survey, feedback from respondents suggests that more detail is needed on how a redesigned penalty rates system would be applied to better gauge the business community’s support.
34. When asked about deregulating penalty rates, a significant proportion of hospitality businesses (61 per cent) and retail businesses (54 per cent) indicated support for negotiated arrangements between employer and employee. The result does not imply that penalty rates should be removed altogether. On the contrary, feedback from businesses responding to the survey points to general acceptance of penalty rates as a legitimate labour cost.
35. The support for allowing greater flexibility in the application of penalty rates reflects the desire amongst Queensland businesses for alternative approaches that involve specific arrangements for each industry and tailored to the scope of work under each award.

In terms of Penalty Rates, which of the following are you most likely to support?



Source: Workplace Relations Survey – February 2015

36. As Queensland's peak industry organisation for small and medium business, CCIQ is well placed to speak about the impact of penalty rates and increased employer obligations surrounding allowances on the competitiveness and profitability of their business. Small and medium businesses in the retail and hospitality sector are major employers in Queensland and Australia, and the factors that influence decisions about whether to retain existing employees and create additional employment opportunities should be carefully taken into account by the Commission.
37. In its assessment of the awards relevant to the hospitality and retail sectors, CCIQ urges the Commission to take a sensible approach to how penalty rates are applied so small and medium businesses can continue to thrive and employ.
38. Based on the evidence contained herein, CCIQ believes that a practical approach to penalty rates, which reflects the contemporary 24/7 nature of our economy, would best serve the needs of small business, their employees, and the nation's economy.

Recommendations: Increasing the scope in the current system to allow for greater flexibility with respect to the operation of penalty rates in the retail and hospitality sectors, particularly for those businesses that operate seven days per week or outside 'standard' trading hours.

Sincerely,

Nick Behrens

Director – Advocacy and Workplace Relations

Survey Method

The analysis undertaken by CCIQ in the preparation of this report is based on 1,038 survey responses from Queensland businesses among the following memberships. The survey was conducted between 11 February and 3 March 2015 to inform our feedback and participation in the Productivity Commission's inquiry into workplace relations.

