

Sunday penalty rate cut for fast food workers makes sound sense

- INNES WILLOX
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The unions' feigned outrage at the Fair Work Commission's penalty rates decision is long on rhetoric but short on facts.

When the dust settles on the commission's decision, hopefully the unions' misinformation campaign will be seen by the public for what it is. No doubt very few people will read the entire 550 pages of the decision. But hopefully people will take the time to inform themselves of the facts.

Ai Group represented the fast food industry for more than two years in the commission. Our case was researched, detailed and ultimately persuaded the commission of its merits.

While union officials are resorting to class warfare and claiming we have returned to the days of a master and servant employment relationship, here are 10 key facts that provide a clear view through their smokescreen.

First, penalty rates are not being abolished. The Sunday weekend penalty rates for level 1 fast food workers will be aligned with the Saturday rate of 125 per cent for permanent employees and 150 per cent for casuals. This is a relatively modest reduction from 150 per cent and 175 per cent respectively. Even higher penalties will apply to fast food employees classified at levels 2 and 3. The public holiday penalty rate will be adjusted to 225 per cent for permanent employees and 250 per cent for casuals — a similar modest reduction.

Second, the adjustment in Sunday penalty rates will be phased in over at least two annual increments, beginning on July 1 this year. The incremental adjustment in Sunday penalty rates will occur on the same day employees will receive a minimum-wage increase through the commission's Annual Wage Review.

Third, despite the unions' attempts to convince the public that penalty rates for nurses, firefighters and all workers are under threat, the commission's decision only concerns fast food, retail and hospitality industry workers. There are some unique issues in these industries and no one is suggesting that penalty rates for nurses or firefighters should be changed.

Fourth, the characteristics of the workforce in the fast food industry are very different to those of workers in other industries. Most fast food workers are fulltime students, aged between 15 and 19 years. Two-thirds of the employees in the industry work less than 25 hours a week. About 60 per cent work on Saturdays and 60 per cent on Sundays.

Fifth, the work preferences of fast food workers are very different to other workers. The commission accepted that a large proportion of fast food workers prefer to work at night and at weekends than during regular business hours, and that many prefer to work on Sundays rather than Saturdays. This preference is driven by personal factors such as availability rather than by penalty rates.

Sixth, the peak business times in the fast food industry are very different to those in most other industries. Weekends and evenings are peak times. Regular business hours have little relevance to the industry and so the commission rightly decided that Sunday penalty rates that were designed many decades ago around regular business hours need to be reset.

Seventh, up to the time when modern awards were introduced in 2010, many of the awards that applied in the fast food industry did not contain any weekend penalty rates. At the time, Ai Group was very vocal in arguing, on behalf of the fast food industry, that the large penalty rate costs that were imposed on fast food businesses were not fair.

Eighth, a large proportion of fast food workers are covered by enterprise agreements. The commission's penalty rates decision does not apply to those workers.

Ninth, the commission's decision followed the Productivity Commission's Inquiry in Australia's Workplace Relations Framework. During its inquiry, the PC carried out a detailed analysis of penalty rates in the fast food, retail and hospitality industries. Similar, to the Fair Work Commission, the PC decided that Sunday penalty rates in these industries were too high and should be aligned with Saturday penalty rates.

Tenth, the penalty rates decision was made by a five-member full bench of the independent Fair Work Commission, headed by Justice Iain Ross, the president of the commission. For more than 100 years, the commission and its predecessors have been responsible for setting and adjusting awards' penalty rates.

The arguments in support of parliament having a greater role in setting penalty rates do not stand the most cursory of scrutiny. There are many

workplace relations laws that need to be reformed by parliament to create a more productive, flexible and fair workplace relations system, but giving politicians a greater role in setting penalty rates has no merit.

Politicians, not surprisingly, are influenced by political factors. Too often decisions of political parties are not evidence-based but driven rather by what is seen as popular at the time.

The full bench of the commission made its penalty rates decision on the evidence.

After more than two years of proceedings, 39 hearing days, 143 witnesses and 5900 submissions, on the evidence, the commission decided that the existing Sunday penalty rates in the fast food industry are no longer fair or relevant, and need to be adjusted.

Importantly the commission found that the penalty rates regime that has been in place is neither fair nor relevant for employers in the current economy, nor does it meet our future economic needs.

Fairness cuts both ways. An independent umpire has made its decision. Not all employers got what they sought. If the decision had gone another way altogether there would have been disappointment but acceptance. All industrial and political figures need to accept the umpire's decision. To not risks industrial anarchy. Nobody wins from that.

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