



## Penalising the Unemployed

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At the heart of any change to Australia's industrial relations system should be the expansion of opportunities to work. In particular, the creation of new opportunities for those that currently have none. And there are fewer groups more opportunity-stricken than the young and unemployed. This is why moves to make it easier to hire young people—to give more Australians opportunities—are so exciting. And it is why the decision of the Fair Work Commission (FWC) to cut penalty rates earlier this year is a small step in the right direction.

On 23 February this year, the FWC handed down a decision as a part of its regular review. While the decision effects only a handful of the 122 current modern awards, the reaction from the trade union movement, and others advocating for further centralised wage fixing, suggested the ruling was a disaster. For instance, Ged Kearney, President of the Australian Council of Trade Unions, called on the government to act to overturn the decision on the day it was handed down:

Unless he acts now, Prime Minister Malcolm Turnbull will be forever remembered as the prime minister who oversaw the cutting of the take home pay of almost one million of Australia's lowest



paid workers.

If you believe that some fast food workers being paid 125 per cent of their base hourly rate on a Sunday instead of 150 per cent is a catastrophe, then you might be inclined to agree. While the FWC decision is not the revolutionary one some have made it out to be, it is certainly a modest improvement.

Changes to introduce flexibility into our workplace relations system must be vehemently defended, because it is the key path for the unemployed to enter dignified employment.

## THE FAIR WORK DECISION

The FWC is Australia's labour market regulator. It is responsible for determining awards and resolving industrial relations disputes.

Every four years, the FWC undertakes a review of the modern awards regime. This year the commission was considering changes to two categories of awards: hospitality and retail.

Three awards were being reviewed under the hospitality category: hospitality industry (general) award 2010; the registered and licensed clubs award 2010; and the restaurant industry award 2010. A further four awards were being considered under the retail awards category: the fast food industry award 2010; the general retail industry award 2010; the hair and beauty industry award 2010; and the pharmacy award 2010.

The FWC decided to make changes to five of the seven awards under consideration: hospitality, fast food, retail, restaurant, and pharmacy. The changes involved reductions in penalty rates from between 150 per cent to 225 per cent down to between 125 per cent and 175 per cent.

The commission did not even bring Sunday rates down to Saturday rates, even though this was recommended by the Productivity Commission (PC) in its 2015 *Workplace Relations Framework* report:

... Sunday penalty rates for hospitality, entertainment, retailing, restaurants and cafes are inconsistent across similar work, anachronistic in the context of changing consumer preferences, and frustrate the job aspirations of the unemployed and those who are only available for work on Sunday. Rates should be aligned with those on Saturday, creating a weekend rate for each of the relevant industries.

Implementing the PC's sensible recommendation is perhaps the simplest and easiest reform to the current penalty rates regime. But even a watered-down version appears to be too much for the ALP, Greens, Nick Xenophon Team, Jacqui Lambie, and Pauline Hanson's One Nation Party, who earlier this year attempted to block the FWC's decision by supporting legislation in the senate.

## THE REACTION

Listening to those who are opposed to the changes you wouldn't know that the FWC proposals are sensible and modest.

Victorian Trades Hall Council Secretary Luke Hilakari responded to the changes saying: 'This is going to be the greatest cut to working people's wages since the Great Depression.' Not to be outdone, the Greens response was similarly immoderate, with Adam Bandt, the party's workplace relations spokesman, arguing: 'This is a body blow to the hundreds of thousands of people who depend on penalty rates to make ends meet.'

While it is true some individual workers will earn less on Sundays, the above analysis says nothing about the effect of the decision in the aggregate.

Perhaps the most confused contribution to the debate came from opposition leader Bill Shorten. On the day the decision was handed down, Shorten said: 'With wages growth at record lows and underemployment at record highs, there could not be a worse time to cut penalty rates.' What is particularly remarkable about this statement is the reference to underemployment. Is Shorten arguing that higher penalty rates are associated with lower underemployment? That's a difficult sell, given all the economic evidence indicates the opposite. In fact, his statement is one of the key arguments for reducing penalty rates.

If the costs of employment decrease, employers have a greater opportunity to employ more people, and to give more hours to existing employees.

Tasmanian Liberal MP Eric Abetz has also argued that the FWC's decision will benefit the 'tens of thousands of young Australians who want to work on weekends who have increasingly found that businesses have not been able to afford opening their doors on Sundays.'

We must make it easier for the poor to find work. That's the simple, moral argument for reducing penalty rates. Not only do significant financial benefits accrue to those that move into paid work, there is also a dignity dividend.

## REGULATED OUT OF WORK

The March 2017 labour market figures released by the Australian Bureau of Statistics (ABS) show that 749,500 Australians are currently unemployed. And that number doesn't take into account the people who are employed but who would prefer to work more hours, and are not being given the opportunity to do so. Nor does it include the people who have simply given up looking for work altogether.

As has been pointed out many times before, youth unemployment is a particularly persistent problem. The Brotherhood of St Laurence earlier this year released a report into this issue, *Generation Stalled: Young, Underemployed and Living Precariously in Australia*.

The most shocking thing about the data it presents is how bad the problem has become. Labour market underutilisation (that is unemployment plus underemployment) for Australians aged between 15 and 24 is currently at its highest rate since the ABS started collecting data in 1978. It is worse today than it was at the height of the recession of the early 1990s. This is a stark picture, showing an urgent need to address the problem.

Young people face a range of issues when it comes to getting a job. As a cohort, young people are not as well educated as their older counterparts in the labour market, and they lack the real world skills and experience that is often so valuable to employers.

But another reason it is hard for young people to find work is because they are locked out of the labour market. Quite apart from the natural difficulties young people face in securing employment are the artificial barriers to entry into the labour market. These are the restrictions that governments place on businesses seeking to hire the most productive employees.

Red tape in industrial relations is nothing new. It's been a problem since at least the *Commonwealth Conciliation and Arbitration Act 1904*. The Australian Unions website proudly proclaims that it was the trade union movement that was responsible for the introduction of penalty rates back in 1947. But even as early as 1909, the idea that employees should be forced to pay penalty payments was put in place first in a decision in the Conciliation and Arbitration Commission requiring time and a half payment:

... for all time of work on the seventh day in any week, or an official holiday, and all time of work done in excess of the ordinary shift during each day of twenty hours.

Presumably the claim of the trade union movement rests on the decision handed down in the Standard Hours Case of 1947. In that case it was argued by the unions that a standard working week, comprising 40 working hours, ought to be enforced by law in order to allow greater 'leisure time' for workers. The court characterised the relationship between employers and employees in almost purely oppositional terms:

It has been the historic role of employers to oppose workers' claims for increased leisure. They have, as is well known, opposed in Parliament and elsewhere every step in this direction, and this case is no exception.

The judgment even recognised that the change would 'add burdens to industry'. But what was not considered were the effects on the labour market, particularly how the decision might have an impact on the unemployed.

The legacy of the Standard Hours Inquiry is our current penalty rates regime. And penalty rates are one of the reasons why it is so hard for young people to find work today. Penalty rates have

created a hurdle too high for many young Australians to clear.

While the effects of penalty rate reductions (or increases) on businesses and consumers are important, it is the effect on the most vulnerable that matters most. The unemployed—overwhelmingly younger, older and low-skilled Australians—are squarely in that category. Reducing penalty rates gives them opportunities they would never otherwise have.

Much of the time it is the effect on this cohort that is lost in the policy and political debate around industrial relations reform. One cause of this is a lack of a representative organisation. Trade unions represent existing workers (at least those that are members of a union), while industry and business associations represent employers.

But there is no formal representation for those who are yet to find work. And, on the other side of the equation, there is no formal representation for those wishing to start a business.

A peculiar feature of the rationale behind penalty rates is that they apply because of an assumption that workers prefer not to work on weekends, and on public holidays. The PC, in its *Workplace Relations Framework* report noted:

In an unregulated well-operating market, it could be expected that employers would have to pay premium rates if they were unable to elicit sufficient labour supply on weekends. This reflects that most employees value weekends more highly than weekdays.

The PC goes on to argue that labour markets are imperfect and that penalty rates are a justified intrusion into the bargains struck between employer and employee, but the concession is not insignificant. It recognises that even without government-enforced penalty rates a natural ‘penalty’ would remain for work during what unions have come to describe as ‘unsociable hours’. Were mandated penalty rates to be removed the natural rate that might apply would be a far more accurate reflection of the real preferences of workers.

## THE FUTURE OF WORK

So, where to from here? While the conclusion of the FWC’s review represents a small step in the right direction, it is also a good indication of the incredibly slow pace with which the central wage fixing model is capable of change over time.

And it demonstrates how inadequate a bureaucratic, one-size-fits-all policy is in meeting the needs of a flexible, fast-paced, global marketplace, in which Australian employees, employers, and consumers find themselves in 2017.

Despite the efforts of government to hamper innovation in industrial relations, far-reaching changes are coming to labour markets due to technological advances. New and exciting opportunities to work are emerging in response to the outdated central control model. We are only at the beginning of this journey into a future of work that embraces flexibility, diversity, and most



importantly, individualism.

Perhaps the most exciting part of these changes is that there is very little the government will be able to do. The pace of technological change will outstrip the speed with which bureaucrats and politicians regulate it in the same way it always has.

And as the old rules break down in favour of individualism the opportunities for those currently outside the labour market will continue to expand. Emerging platforms such as Uber, Lyft, Freelancer, Airbnb, DogVacay, SideCar, Justpark, and Snapgoods are just the beginning.

The future of work is exciting.

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