Penalising Work – A Historical Account of Penalty Rates in Australia

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Penalty rates have been a fixture of Australian industrial relations regimes since the late 1800s. With federation, a series of decisions by various state and federal wage-setting bodies began, culminating in the first ‘national’ penalty rate decision in 1947.

These early decisions indicate that penalty rates were imposed not as a compensatory measure for workers for performing weekend work, but in order to deter the ‘social evil’ of Sunday labour. This rationale obviously became less relevant throughout the post-war economic boom, as attendances at religious services declined while Australian work and consumption habits underwent significant change. While proponents maintained that penalty rates were a vital means of compensating for weekend work, there was growing community acceptance that greater flexibility would benefit consumers and businesses.

However, reforms to penalty rates have been, at best, piecemeal, particularly when compared to the liberalisation of weekend trading hours during the same period. Like penalty rates, restrictions on weekend trading hours had an anti-competitive and religiously-motivated rationale. Yet unlike

penalty rates, trading hours have been either completely or substantially deregulated in all states and territories. The result is a regulatory anomaly in which businesses are no longer restricted from trading on the weekend, but remain penalised if they employ staff during this time.

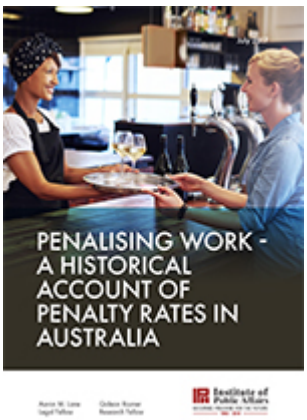
Nevertheless, there have been a few minor reforms to penalty rates, including a number of recent decisions by the Fair Work Commission, including a reduction in certain industries as part of the consolidation of various state awards in 2010 and a reduction in Sunday penalty rates under the Restaurants award in 2014.

The recent decision by the Fair Work Commission to reduce Sunday penalty rates in certain awards should therefore not be seen as unique or radical. It is part of a wider – if incremental – trend towards recognition of changing work and consumption habits.

Still, the modest reductions occasionally meted out by the Fair Work Commission do little to address the fundamental problem with penalty rates: That they distort the labour market and limit economic opportunities of both businesses (which would otherwise employ more staff for weekend work) and workers (who would otherwise have more work opportunities available).

Further, the way in which penalty rates are determined under the Fair Work Act gives rise to a number of broader structural problems. For instance, the limited ability to 'trade away' penalty rates via enterprise bargaining agreements place small businesses at a competitive disadvantage relative to larger businesses with the resources to negotiate favourable agreements.

Proposals to place legislative limits on the ability of the Fair Work Commission to lower penalty rates further would obviously be a retrograde measure. The ideal situation is one in which penalty rates – if any – are determined directly between employers and employees. The priority of policymakers in this area should, therefore, be reforms to allow for greater flexibility over penalty rates in what is currently a highly centralised system.



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