SDA SUBMISSION

to the

SENATE COMMITTEE

Re: Fair Work Amendment (Small Business – Penalty Rates Exemption) BILL 2012

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SUBMISSION OF THE

SHOP DISTRIBUTIVE & ALLIED EMPLOYEES ASSOCIATION

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1. The Shop, Distributive and Allied Employee's Association (SDA) is Australia's largest trade union with approximately 212,000 members. The majority of these members are young people and women. Registered in 1908, the SDA has coverage of areas including retail, fast food, warehouse, drug and cosmetic manufacturing and distribution, hairdressing, pharmacies and modelling.
2. The SDA welcomes the opportunity to comment on the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 (the "Bill).

The SDA vehemently opposes the Bill in its entirety.

3. It is simply not appropriate for the Parliament to seek to legislate the wages and working conditions of Australian workers. The Bill therefore, is fundamentally flawed in its very conception.
4. The role of the parliament is to establish an independent tribunal, staffed by objective and experienced industrial experts to determine wages and working conditions. In the establishment of Fair Work Australia, and with its forerunners since 1904 the parliament has done this. We note that the Parliament has legislated a set of National Employment Standards which establish a basic safety net for workers. These standards broadly reflected, at the time of the legislation being enacted, the existing standards already established in the award system, both at the state and federal level, all around Australia
5. This is as far as the parliament should go. It should leave any further consideration of wages and working conditions to Fair Work Australia.
6. Much has been reported in the media about the alleged cost burden on employers in retail and hospitality in regard to penalty rates, but very little has covered the destructive impact that eliminating these rates would have on employees.
7. It is the intention of the SDA to highlight the failings of this Bill and expose the fallacies and inconsistencies behind the arguments of small business employers, with a focus on the retail and fast food industries.
8. The reduction or removal of penalty rates, whether they be penalty payments to compensate workers for shiftwork, overtime, working at night, working on week ends and /or working on public holidays would have a most serious adverse impact on those workers and their families.

9. In its consideration of this Bill the Senate should note the very serious negative impact that this proposed legislation would have upon the take home pay of more than a quarter of a million of some of the lowest paid workers in Australia. This is reason enough for this Bill to be cast aside.

10. The proposed legislation is both ill-conceived and fundamentally unfair.

11. This proposed amendment of the *Fair Work Act* 2009 (the "Act"), ignores the many decades of industrial history during which penalty rates evolved as a direct result of negotiation between unions and employer associations, and the expertise of the industrial umpire. Currently, Fair Work Australia is examining over 11 separate applications by employer associations to slash penalty rates in the General Retail Industry Award and Fast Food Industry Award. The SDA contends that the industrial tribunal is the appropriate place for these conditions to be tested.

12. This Bill, developed without proper consultation of all of the key stakeholders involved, is fraught with problems and is inherently discriminatory. Should it ever see the light of day and be passed into law, it would, at best, create a two-tier class of employees in retail and hospitality – those who work for medium to large employers who would receive their fair entitlement to compensation for work during unsociable hours and those who work for 'small' employers who would not.

13. Penalty rates are not a prehistoric concept to be derided and eradicated because some do not consider them 'modern'. Indeed, they reflect the very basic tenet of our modern industrial legislation, the *Fair Work Act 2009*, in that they are "fair" - they compensate employees for working unsociable hours at times and on days when many others enjoy family gatherings, social occasions, religious commitments or leisure time.

14. The very fabric of our society is held together by engaging with friends, family and the wider community and these times frequently occur in the evenings, on weekends and on public holidays. For those who work during these times, regardless of whether or not they have elected or been required to, they are deserving of recompense for missing out on valued and valuable social times, *especially* when they are amongst the lowest-paid workers in the country.

15. The idea of penalty rates is not a curious idea supported only in Australian industrial legislation – it is a concept upheld by the International Labour Organization ("ILO") through several of its conventions.

The SDA recommends that the Bill be voted down.

Eliminating evening, weekend, public holidays, shiftwork and overtime rates of pay – the effects on retail and fast food employees

16. The SDA strongly objects to this attempt to erode penalty rates for "retail" and "restaurant and catering" workers, irrespective of the size of the business they work for. Before this submission proceeds any further, it is crucial that those who are considering this Bill are cognisant of one indisputable fact; these workers are amongst the lowest paid in the country[1] and much has been covered in the media about this fact[2]. When calculating wages growth less productivity growth, in the five years leading up to December 2011 workers in retailing were underpaid by 2.8 percent, whilst those in hospitality were underpaid by 3.1 percent[3]. Employees in these industries are not enjoying a high-paying salary or generous benefits such as company cars. Many are just managing to 'get by' on the wage they earn.

17. Threatening the take home pay by removing penalty rates for weekend and evening work, will effectively slash the wages of more than 250,000[4] employees who work for small businesses and are subject to their award. In fact, the number of employees affected could be even greater, given that this figure, drawn from 2010 ABS data, has only calculated the number of people working for an employer who employs less than 20 employees, rather than 20 *full-time equivalent* employees. Furthermore, in the two years since this data was captured, many employees would fall into the 'award' paid category with the numbers of those paid under AWAs reducing with attrition. An employer could conceivably employ a mix of 60 full-time, part-time and casual employees and still be exempt from paying penalty rates under this proposed amendment so the number of employees who would have their wages attacked could be considerably higher than 250,000. That is a staggering figure by any measure.

18. Although Senator Xenophon has not listed the awards which would be directly impacted by this Bill if it were to eventually receive Royal Assent, the SDA presumes that if passed in its current state, the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 could effectively see the complete eradication of evening, weekend, public holiday, shiftwork and a significant portion of overtime penalty rates for over a quarter of a million employees under the General Retail Industry Award 2010 ("GRIA") and Fast Food Industry Award 2010 ("FFIA") (of which the SDA has coverage), in addition to the Hospitality Industry (General) Award and Restaurant Industry Award.

19. The only occasion where these employees would be entitled to any additional earnings above their base rate of pay would be in the instances where overtime currently applies for work in excess of 38 hours per week and 10 hours per day. Otherwise, any permanent employee who works for an

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[1] "Wages Report – The Emergence of the fluoro collar worker," May 2012, Suncorp Bank
[2] "The pay-off: rise of the fluoro leaves white-collar workers feeling blue," 3 May 2012, The Australian, pp1-2; "Throw on a fluoro money vest," 3 May 2010, Herald Sun, p9.
[3] "Wages growth less productivity growth," 30 July 2012, IBISWorld table.
[4] Survey of Employee Earnings and Hours, ABS cat. no. 6306.0, May 2010

employer covered by the GRIA or FFIA who engages less than 20 full-time employees would only be entitled to earn $17.53 for any hour worked, irrespective of whether or not that hour is worked at 3am on Christmas Day, 1am on a Sunday morning, or 3pm on a Tuesday afternoon.

20. The deleterious effect this would have upon the employees of exempted employers must be considered when examining this Bill.

21. The following examples illustrate the extreme effect this amendment would have on the employees subject to this proposed amendment under the General Retail Industry Award. They are calculated based on the transitional rates for penalties.

22. A full-time shiftworker in South Australia working Monday to Thursday 10pm to 6am and Friday 10pm to 4am is currently entitled to $794.70. The same hours in Victoria would equal $865.93. The removal of their nightshift penalty rates will see them earn $666.10 per week. For the South Australian shiftworker, that is a reduction of $128.80, or just over 16 percent of their wage. The Victorian employee would have their wage slashed by $199.83, or over 23 percent, as a result of this amendment.

23. A part-time employee employed by a "small" employer in New South Wales who works from 6pm to 9pm Thursday and Friday and 10am to 4pm on Saturday and Sunday is currently entitled to $460.57. If successful, this Bill would see the employee's wage slashed to $298.01 for working the exact same hours. This employee stands to lose over 35 percent, or $162.56 of their weekly income as a result of their penalties being removed.

24. A casual Victorian employee working 5pm to 9pm Thursday and Friday and 10am to 4pm Saturday and Sunday is currently entitled to $505.51. With the passing of this Bill, their weekly wage would be reduced to $416.34, which is $89.17 less than they receive today.

25. The negative impact upon the livelihood of employees working these hours is indisputable. Their wages would be severed to a point where basic costs of living would not be able to be met. Rising prices of utilities, petrol prices and transport fares, coupled with high rent/mortgages across the country, makes meeting the basic cost of living difficult already for employees under these awards. This proposition to slash the salary of employees by hundreds of dollars would have dire consequences for the employee and for the economy as a whole.

26. What little discretionary income an employee may have under the current terms and conditions would be eliminated completely by the wholesale removal of penalty rates. If small businesses are concerned that their turnover cannot afford to pay wages, have they considered what impact the removal of the discretionary income of over a quarter of a million employees would have on their takings?

27. How many employees would be able to afford to buy any goods or service beyond the basics, after their wages are whittled down by this amendment?

28. The majority of retail workers are women. The majority of retail and fast food workers are young. The casualisation of both industries is high and the insecure nature of the work makes employment in these industries even more tenuous.

29. If passed, this Bill would create an underclass of workers who cannot hope to earn more than $34,637.20 per annum if they are a Level 1 permanent, full-time 'adult'. That is a mere $3,104.40 per annum more than the minimum wage. However, an employee performing the same role but for an employer with 20 or more full-time equivalent employees could earn significantly more if their shifts cover weekends, evenings, public holidays or night shifts. A full-time Victorian shiftworker would be entitled to a salary of over $45,000 at a non-exempt business. Their counterpart at an exempt business, however, would earn less than $10,000 per annum for performing the same role, at the same time and day of the week. The penalty rates provided for these unsociable hours make the difference between living on little more than minimum wage and an extra $10,000 to make ends meet.

30. To literally take this money out of the pay packet of countless Australian workers is unconscionable and economically unsound. Furthermore, it ignores the many decades of industrial arbitration in Australia which has seen the development of penalty rates in a country with a proud and rich history of paying its workers fairly.

An underclass of workers – who will chose to work for small businesses?

31. Creating an underclass of employees in retail and fast food would also create significant issues of inequality for the work that employees perform for small and non-exempt businesses. On a public holiday, two part-time employees under the award could perform the same tasks at exactly the same time but one would receive $43.83 per hour for their work, whilst the other would receive $17.53 per hour. It would not be an understatement to declare this scenario completely unjust. These rates are set to compensate employees for giving up a holiday to which all workers are entitled.

32. Under this amendment, this right would be stripped away from an employee who does not have the fortune to work for a non-exempt employer. This then begs the question – how will small business employers attract and retain good staff when these employees could work at a larger establishment and earn fair and decent wages?

33. It would only be a matter of time until the non-exempt employers would agitate to join the small businesses and press for the complete elimination of penalty rates across the board. Emboldened by this move, employers from other industries would soon call for their awards to be included until penalty rates would become a thing of the past. This is not the workforce the majority of Australians want to see.

A brief history of fair pay and penalty rates in Australia – 1907 to 2012

34. The Harvester Judgement of 1907 (*Ex Parte* H. V. McKay) laid an important foundation in the building of Australia's industrial relations system. When Justice Higgins declared that a "fair and reasonable" wage would meet the "normal needs of the average employee, regarded as a human being living in a civilized community," he made a ground-breaking decision that entitled a worker to a decent minimum wage. Over the course of time, other industrial standards have developed to ensure a fair safety net for workers, including the emergence of penalty rates for weekend and evening work.

35. In 1919, Justice Higgins commented upon Sunday work in the *Gas Employees Case* (1919) 13 CAR:

36. The true position seems to be that extra rate for all Sunday work is given on quite different grounds for an extra rate for work on the seventh day. The former is given because of the grievance of losing Sunday itself – the day for family and social and religious reunions, the day on which one's friends are free, the day that is most valuable for rest and amenity under our social habits; whereas the latter rate is given because seven days per week for work are too many.

37. Penalty rates were noted by Drake-Brockman J, in the "South Australian Railways Case" (1935) 35 CAR, as playing the role of "discouraging employers from employing men under conditions likely to impair their health, or for the purpose of discouraging certain kinds of work, or working under particular conditions," citing overtime as an example of this. Twelve years later, the "Weekend Penalty Rates Case" (1947) 58 C.A.R. set the standard for time and a quarter on Saturdays and double time on Sundays across a wide range of industries. Despite Justice Drake-Brockman's earlier interpretation of the role of penalty rates as being a deterrent, they were since acknowledged in the "Weekend Penalty Rates Case" by the industrial umpire to also be compensatory in their nature.

38. Penalty rates are not a prehistoric concept to be derided or discarded because they have existed for the better part of a century. Indeed, penalty rates in retail have been recently retested and once again, found to be appropriate and fair. Less than a decade ago in 2003 and following "several years" of proceedings, the Full Bench of the Australian Industrial Relations Commission ("AIRC") found the appropriate penalty for Sunday work in retail under the *Shop, Distributive and Allied Employees' Association – Victorian Shops Interim Award 2000* to be double-time. This decision was made following "a greater incidence of Sunday trading in Victoria," which, in the Commission's view, "does not affect the disabilities endured by employees working on Sundays. As such, we think the double time remains appropriate." The case presented at the time by the employers called for time and a half on a Sunday. It is important to note that when considering the rate for Sunday work, trading on a Sunday was no longer restricted in Victoria. The AIRC found that

despite widespread trade on this day, employees were still entitled to double time rate as compensation for giving up the common day of rest for the majority of the public.

39. Once again, a lengthy examination of penalties was undertaken, and once again, the industrial umpire continued to support the notion of compensating those who work the hours which many do not. The employers in the retail industry accepted this decision and have paid the double time penalty rate under the award ever since. No employer organisation has been so bold as to call for their complete removal of the Sunday penalty rate even though this Bill does.

Shedding light on award modernisation in retail and fast food

40. In developing the GRIA and the FFIA a full consultation process was undertaken by the Australian Industrial Relations Commission (AIRC). The Award was not developed in a void, isolated from the industry employers. A simple look at the number of submissions made in the retail industry modernisation process shows the sheer volume and the range of interested parties. Small retailers, large retailers, big and small employer organisations and unions all made repeated submissions arguing various points. Furthermore, the AIRC issued a draft award for consultation as part of the process. Arguments were submitted and considered by the AIRC on many issues. These arguments covered all items of contention and were followed by the issuance of a draft award until the final award was made on the basis of all that had been argued.

41. The retail industry during the modernisation process received the most submissions. The retail industry also had the longest hearings. In fact, the retail industry always required extra time and extra submissions over the modernisation process. Even when the Award was made in December 2008, a further round of applications was made by parties seeking changes. Multiple applications were made by various employer organisations to reduce penalties. A Full Bench of Fair Work Australia determined this application. An extract of the decision is as follows:

a. Sunday penalties

i. The NRA, CCIWA, RTAWA and the Australian Retailers Association (ARA) seek to reduce the Sunday penalty rates for full time employees from 100% to 50% and for casual employees from 125% to 50%. The rates sought are reflected in NAPSAs applying in New South Wales and to Queensland exempt shops but are not generally reflected in other pre-reform awards and NAPSAs. The modern award rate of 100% for full time employees is in line with the existing rate in Victoria, the Australian Capital Territory, Queensland non-exempt shops, Western Australia and Tasmania. In our view the critical mass supports the retention of this provision.

ii. [2010] FWAFB 305, 29 January 2010

42. Many employer submissions were made seeking lower penalties and lower casual loadings than those that were eventually placed in the awards. The AIRC was required to examine submissions, examine the then current awards that operated and determine, based on this, what conditions would apply. An independent expert umpire, namely the AIRC, made a decision, based upon all the arguments that were submitted and in the context of the Australian retail environment of 2008. The SDA believes that those who are experts in industrial relations have done the work and understand the various positions

What Australians think about zero penalties for low-paid workers

43. Few would consider it reasonable to require a person to work Tuesday to Sunday, for 52 weeks of the year from 11pm to 5am without any compensation above the base rate of pay, yet that is exactly what this Bill would achieve.

44. A casual employee working this pattern of hours would only be entitled to their 25% casual loading. Under the GRIA they would be denied the shiftworker rate, Saturday and Sunday penalties and overtime rates for working more than 5 days per week. Under the FFIA, they would lose their evening, Saturday and Sunday penalties. They would be paid exactly the same per hour as a casual employee working Monday to Friday, 9am to 5pm. This is inherently unfair and it is not only the SDA or other unions which believe this to be the case.

45. The majority of Australians polled this year have overwhelmingly supported penalty rates in one form or another. An Essential Research survey published on 10 April 2012 asked the question, 'Do you think workers should get a higher hourly rate for working on weekends or should the weekend rate be the same as the weekday rate?' 78 percent stated that the weekend rate should be higher and only 18 percent believed they should be the same – 4 percent were unsure. Of those surveyed who were part-time, 86 percent supported a higher hourly rate for working on weekends. Essential Research commented that "There were no significant differences across income groups." Irrespective of the socio-economic status of the surveyed individuals, nearly 80% of all respondents believed that penalty rates for weekend work were reasonable and fair.

46. Four months later and a Galaxy Poll[5] conducted in August found an increasing number of people (87 percent) supported penalty rates for weekend work. An overwhelming 97 percent said that weekends were an important time for families. It appeared that the media reports of employer associations calling for the reduction or removal of penalty rates did not do much to engender support from the public at large, indeed, it appeared to have the opposite effect. Clearly, Australians do not believe that penalty rates belong on the industrial scrapheap. Rather, they

[5] "Penalty Rates Study," August 2012, Galaxy Research

consider them to be fair and appropriate conditions for those who work at times when the majority does not.

47. More than a century after the Harvester Judgment, Australians still believe in the fundamental right to a fair and reasonable wage. Industrial decisions since this landmark decision have endeavoured to strike the right balance between the interests of the employee and the employer. There is a reason why, despite the barrage of cases against penalty rates fought by employer associations in the industrial courts and tribunals, they still exist today. Put simply, they are fair.

48. Penalty rates belong in a society which values employees as people with responsibilities and needs outside of their workplace. They compensate employees for working at times when many others are relaxing, socialising or even sleeping!

Inconsistency with the *Fair Work Act* and International Labour Organization standards

49. An examination of the Fair Work Act reveals how inconsistent this proposed amendment would be with the Act's own Object:

a. Division 2—Object of this Act

b. 3 Object of this Act

i. The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:

(a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations; and

(b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and

(c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and

(d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and

(e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and

(f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action; and

(g) acknowledging the special circumstances of small and medium-sized businesses.

50. The Act's Object "to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians" is

hard to argue against. It accepts that in workplace relations, a balance must be strike between the rights and responsibilities of employees and employers in order for a healthy society and economy to exist. Whilst the "special circumstances of small and medium-sized businesses" are a factor for considering how this objective is to be achieved, so too are the following;

- "providing workplace relations laws that are fair to working Australians";
- "take into account Australia's international labour obligations";
- "ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders"; and
- "ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system"

51. No 'balance' can be achieved by stripping away long-held rights of employees to maximise profits for employers. Nor can the "safety net of fair, relevant and enforceable minimum wages and conditions" remain guaranteed when this Bill proposes to remove significant rates upon which hundreds of thousands of people rely. This proposed amendment to the Fair Work Act undermines the Object of the very same Act.

52. (The right to compensation for work at unsociable times is not a strange concept only appreciated in Australia. It is widely accepted throughout the world. For example, support for this amendment would directly contravene the ILO's *Night Work Convention*, (1990), which clearly states at Article 8 that "Compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work.")

53. Evidently, this Bill would offend the Object of the Act it seeks to amend. It is deeply flawed and fails to respect the work employees perform at times and days of the week when society as a whole enjoys its leisure time.

The current debate – correcting some fallacies and misconceptions

54. Once again, the penalty rates of some of Australia's lowest-paid workers are under attack. From the lead up to Fair Work Australia's review of modern awards to the present day, there have been

numerous newspaper articles from disgruntled employers and employer associations bemoaning penalty rates and their obligation to pay them[6]. Most of the coverage in the media has focused on the claim that penalty rates make it too expensive to trade on a Sunday, which leaves small businesses with little choice but to either work the hours themselves, continue paying double time and not make a profit, or close their shop for the day.

55. At first blush, an average person reading any of these articles could be forgiven for thinking that penalty rates were new or higher than ever before and that the wages' cost on small businesses in retail and fast food is exceptionally high. They could also be forgiven for drawing the conclusion that the concept of a 'weekend' in Australian society is dead and buried. They would be wrong.

56. It should be noted that Australian retailers over several decades have sought and achieved longer shop opening hours. They have sought and achieved the opening of shops on nights, on Saturday afternoons, on Sundays and on many public holidays, knowing the penalty rate provisions of the relevant awards. At the times they did this they states that they would pay the relevant penalty rates without complaint. Now they have achieved the deregulation of retail trading hours they complain!

Fallacy –wages under the modern awards are exceptionally high

57. An examination conducted by the SDA on the terms and conditions of the General Retail Modern Award 2010 in comparison with the preceding state and federal awards for retail has shown that for the vast majority of employers covered by the GRIA, they are better off. That is, the wages payable today are comparable to or lower than they would have been had their previous award continued to be in operation and the minimum wage increase continued to be applied. This may come as a surprise to many, because the truth of the situation has been clouded in a fog of distorted and false representations.

58. The modern retail award provides for 24 hours, 7 days a week operation without overtime. This is the first time such a provision has applied. Under the numerous previous awards, there were limitations on when and how ordinary hours could be worked, i.e. nightfill could only occur when the store was closed, "fill" ended at midnight, only one late night (evening) of work in a week could be rostered. A 24-hour trading store would have needed to use overtime rates to staff the store for substantial periods of the night and early morning. The modern retail award now allows and caters for 24 hour operations. This is a major gain for employers that the modern award has provided. The retailers, of course, do not mention this when speaking in the media.

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[6] "Retailers want wages slashed," 15 February 2012, p25; "Penalty rates in focus," 9 July 2012, Australian Financial Review, p4; "Retail fight on penalties," 12 August 2012, Sunday Herald Sun, p10; "Penalties to force fast-food price lift," 15 August 2012, The Australian.

Fallacy – penalty rates have increased for all small businesses

59. Much has been made of employers complaining about increased penalties. Any penalty increase will take five years to fully implement. However, many retail employees lost in an instant a substantial component of their regular wage due to the fact overtime was not a "penalty" and therefore was not phased in or out. It was simply removed. To illustrate this, in many states work between 6 pm – 9 pm Monday – Thursday was overtime. Retail workers regularly worked this time, e.g. supermarkets open to 8 pm. Employees working between 6 pm – 8 pm were paid a 50% overtime penalty. With the new award span of hours allowing work after 6 pm with a penalty of 25%, a "transition" is to occur. This transition however is from 0% to 25% over five years as the overtime penalty was not saved. FWA and the Fair Work Ombudsman have both agreed this is correct, so employers could freely trade to 8 pm, no longer pay the overtime penalty, do not have to pay the full 25% penalty, but enjoy a five year phase-in of the transition from 0 to 25%. Currently, a transition penalty of 15% applies. This is substantially less than that which workers previously received. Again, retailers are not discussing this benefit they have been enjoying since 2010.

Fallacy – Late nights, early mornings and weekends are no different to standard weekday hours

60. The latest argument to come from those who wish to see penalty rates eradicated is that the concept of the standard working week is no longer applicable to Australian society. The SDA acknowledges that throughout the country, due to the GRIA, retailers are now largely able to operate 24 hours a day and 7 days per week. The only restrictions surrounding trading are based on state government legislation. Indeed, it was the SDA which drafted the 'modern' ordinary hours into the GRIA, allowing for retailers to trade 24/7 without a fixed obligation to pay overtime by extending ordinary hours and using shiftworker provisions.

61. The SDA was more than reasonable in its approach to trading hours, but once again, this is not enough to satisfy those who will only be happy when the rights of employees are completely stripped away.

62. Senator Xenophon claimed during his second reading speech, "there are now many employees who consider their ordinary hours to include weekends, evenings and early mornings." Implicit in this statement is that if a person working a midnight to 5am shift on a Sunday morning considers these hours to be their regular times, then they are not entitled to any compensatory payment for these times. What we respectfully suggest the Senator has failed to understand, is that employees working at these times often do so because they receive penalty rates, which makes the unsociable hours worth their while. They give up much in order to receive better pay in an industry acknowledged for its low wages. In other cases employees are working at unsocial times because it

is a condition of their employment. Many SDA members at David Jones and Myer have objected to rosters involving Sunday work but, in most cases they have no established right to refuse to work the rosters provided to them by the company concerned.

63. The overwhelming majority of Australians believe that work on weekends, at nights and on public holidays is unsocial.. In fact, the aforementioned Galaxy Poll revealed that 77 percent of Australians disagreed that working on the weekend was no different to working other days of the week. Amongst 18-24 year olds (who are notably highly likely to work these times in retail and fast food), 87 percent felt that working on the weekend was different to working weekdays. It is all too easy for those who do not have to front up for a midnight shift on a Sunday morning to make claims that work at this time is the same as turning up for work at 9am on a Wednesday.

Conclusion

64. Penalty rates have developed over the better part of a century and form an important condition for Australian employees. They compensate them for working unsociable hours and comprise a significant portion of the take-home pay for employees who work at these times, allowing them to pay the rent/mortgage and to purchase goods and services. These are the very same goods and services, it should be noted, which retail, fast food and hospitality outlets sell.

65. Reducing the take-home pay of some of the lowest-paid workers will have a devastating effect on their standard of living and on the economy as a whole.

66. Throughout the award modernisation process and currently during Fair Work Australia's review of modern awards, employer associations have continuously agitated for a reduction in penalty rates. However, overwhelmingly the industrial umpire has continued to recognise that penalty rates are key to providing a fair and reasonable set of terms and conditions for employees who work unsociable hours, even if they freely chose to do so. Those employed at nights, on weekends and public holidays, miss out on opportunities to engage in leisure time with family, friends and the wider community and are entitled to extra payment as a result. There is nothing out-dated about the concept of paying people more to work at times when most people would rather not.

67. Many false assertions have been made about the place of penalty rates in a 'modern' society. Claims that we now live in a '24/7 world' and our awards must adapt to reflect this, obscure the reality that the retail and fast food awards *do* provide for work around the clock. The cries of some employers that they cannot afford to pay staff wages on a Sunday and will therefore have to work these hours themselves, thereby missing out on leisure time, smacks of hypocrisy. Their lack of willingness to work on a Sunday only serves to negate their claim that weekends are not valuable enough to warrant special rates of pay for those who will work them.

68. Any examination of the two recent polls previously referred to, unequivocally demonstrate that the majority of Australians still value the weekend and believe that people should be compensated for working during it.

69. It is not just payment on weekends which this Bill would eliminate. Working six days in a row, late at night, early in the morning, or on public holidays would also be devalued. It would mean that when working these times employees would receive only the base rate of pay which is currently $17.53 per hour. By no one's standards can this possibly be considered 'fair' or in keeping with the Act's Object "to provide a balanced framework for cooperative and productive workplace relations." There is no balance in stripping away long-held rights of employees to maximise profits for employers.

70. The creation of an underclass of employees in retail and fast food would also create significant issues of inequality for the work that employees perform for small and non-exempt businesses. Then it would only be a matter of time until the non-exempt employers would agitate to join the small businesses, followed by employers across all industries, until the complete elimination of penalty rates from all awards would be achieved.

71. To deny employees the penalty rates which have been a long-standing condition of employment throughout Australian industrial history is to treat them like second-class citizens. Ultimately, it sends a clear message that their work, time and effort is of little value.

72. In light of the above, the SDA cannot support any part of this Bill. It will not even afford any time to consider the technical problems in regards to the actual wording of the Bill itself. To threaten the livelihood of some of the lowest paid workers in the country is to abrogate responsibility to pay fair and just wages. This is simply unacceptable.

The SDA respectfully recommends that this Bill be voted down by the Senate.