

Victorian Government response to the Victorian Parliamentary Select Committee Inquiry into Penalty Rates and Fair Pay

20 September 2018

The Victorian Government believes in a fair and comprehensive safety net of wages and conditions, including penalty rates. Therefore, we welcome the Inquiry report and findings and support in full all of the nine recommendations made by the Committee.

Significantly, the inquiry found that the Fair Work Commission (FWC) decision disproportionately affects women and young workers, and that the reduction in income of some workers will likely have a flow on economic effect, particularly in small regional communities. The Committee found that there is no evidence that the reduction in penalty rates has led to job creation, or additional hours of work. They also found that non-compliance with wage and conditions obligations is disproportionately higher in the hospitality and retail sectors.

The Victorian Government has taken every opportunity to make submissions to various inquiries and advocate in support of penalty rates. For example, our submissions of April 2015 to the Productivity Commission Inquiry into the Workplace Relations Framework and 11 March 2016 to the FWC modern award review confirmed Victoria's support for the maintenance of penalty rate arrangements. Our submissions have included that:

- working on nights and weekends can have a detrimental impact on health, family and personal relationships;
- of employees who received penalty rates for working unsociable hours, over one third relied on penalty rates for household expenses, and these employees are more likely to be women, sole parents, living in rural or regional locations or employees with combined household incomes less than \$30,000;
- for these employees, their ability to choose whether to work unsociable hours is constrained by economic necessity; and
- reductions to penalty rates will disproportionately affect women, the low-paid and vulnerable workers.

The Victorian Government's submissions to the Annual Wage Reviews 2016-17 and 2017-18 both recognised that reductions in penalty rates will cause significant hardship for low paid workers in the relevant sectors and the decision will affect award-reliant, low paid workers, including young workers and women who make up more than half the workforce in these sectors.

A re-elected Andrews Labor Government has committed to making wage theft a crime. New wage theft offences will be investigated and prosecuted by the Victorian Wage Inspectorate.

Recommendation	Response	Comments
<p>Recommendation 1 (page 39)</p> <p>The Victorian Government advocate for the Commonwealth Government to legislate to restore penalty rates in the relevant awards to their previous levels.</p>	<p>Support in full</p>	<p>In 2016 the Victorian Government made a submission to the Fair Work Commission (FWC) review of modern awards advocating the retention of weekend and public holiday penalty rates at their (then) current levels.</p> <p>The Victorian Government accepts the findings of the Victorian Parliamentary Select Committee finding that:</p> <ul style="list-style-type: none"> • the FWC decision disproportionately impacts women and young workers; • the reduction in income of some workers will likely have a flow on economic effect, particularly in small regional communities; • there is no evidence that the reduction in penalty rates has led to job creation, or additional hours of work; • reductions in penalty rates may benefit consumers through longer trading hours or reduced prices, but this is likely to come at the expense of the employees of the business; and • the reduction in penalty rates for on-going employees may encourage them to seek less secure casual work. <p>Consistent with the Victorian Government policy of protecting low paid, vulnerable workers, the Victorian Government supports the restoration of penalty rates to the level they were at prior to the decision of the FWC of 23 February 2017 and will continue to advocate in this regard.</p>
<p>Recommendation 2 (page 39)</p> <p>The Victorian Government advocate for changes to the <i>Fair Work Act 2009</i> (Cth) to ensure that the Fair Work Commission cannot vary a modern award in a way that would, or would be likely to,</p>	<p>Support in full</p>	<p>The FWC must ensure that modern awards, and the National Employment Standards under the <i>Fair Work Act 2009</i> (the FW Act) provide a fair safety net of minimum pay and conditions (section 134(1)). The Victorian Government believes that it is inconsistent with this requirement to reduce weekend and public holiday penalty rates. Therefore, the Victorian Government supports a change to the FW Act to ensure that this objective is</p>

<p>reduce the take-home pay of any employee covered by the award.</p>		<p>met, and the Commission’s powers in relation to reducing penalty rates are confined and will continue to advocate in this regard.</p>
<p>Recommendation 3 (page 40)</p> <p>The Victorian Government advocate for the Commonwealth Government to change the Fair Work Regulations 2009 (Cth) to require the relevant award and classification to be included on payslips; and investigate options to include the relevant award and classification on the payslips of Victorian State Government employees.</p>	<p>Support in full</p>	<p>The Victorian Government believes that payslips should accurately inform employees of their rate of pay, any deductions made from that pay (such as tax), and their employer’s superannuation contribution. It is consistent with this that payslips also include the employee’s award and award classification, where relevant, and will advocate in this regard.</p>
<p>Recommendation 4 (page 43)</p> <p>The Victorian Government advocate for the Commonwealth Government to review the resources provided to the Fair Work Ombudsman and ensure it has sufficient resources to effectively carry out its role, particularly in regional and rural areas.</p>	<p>Support in full</p>	<p>The Victorian Government acknowledges the good work of the Office of the Fair Work Ombudsman (FWO) in investigating alleged breaches of the FW Act, and prosecuting those breaches where appropriate. The work of the FWO was referenced in the report of the Victorian Inquiry into Labour Hire and Insecure Work, which has led to the recent passage of the <i>Labour Hire Licensing Act 2018</i>. It is apparent, however, that the FWO requires more resourcing, particularly in regional areas. The Victorian Government will advocate in support of more resourcing.</p> <p>It is noted that in the 2018-19 Commonwealth budget, the budget for the FWO and Registered Organisations Commission will increase by \$8.1m over the outlook period. However, this will go exclusively to the Registered Organisations Commission. This is despite the FWO being given increased powers under recent changes to the FW Act, with respect to certain unconscionable behaviours.</p>

<p>Recommendation 5 (page 43)</p> <p>The Victorian Government advocate for the Commonwealth Government to review the powers of the Fair Work Ombudsman and examine options for more disputes to be resolved outside the court process.</p>	<p>Support in full</p>	<p>The Victorian Government supports a review of the powers of the FWO to assist with the speedy and cost-effective resolution of disputes and will advocate for this.</p>
<p>Recommendation 6 (page 46)</p> <p>The Victorian Government introduce legislation to create a new criminal offence, with the option of a custodial sentence, for dishonestly underpaying wages or entitlements.</p>	<p>Support in full</p>	<p>On 26 May 2018 the Premier announced that a re-elected Andrews Labor Government will legislate to make “wage theft” a crime. The Premier also announced the creation of the Victorian Wage Inspectorate, to enforce the new laws.</p>
<p>Recommendation 7 (page 47)</p> <p>The Victorian Government explore opportunities to include greater education about workplace rights through secondary and tertiary education and advocate for the Commonwealth Government to do likewise.</p>	<p>Support in full</p>	<p>The Victorian Government notes the comment of the Committee at page 47 of its report that “Prevention is better than cure. If Victorians are educated about their rights as employees throughout their secondary and tertiary education, they will feel more empowered to raise these issues early and reduce the opportunities for unscrupulous employers to underpay them”.</p> <p>The Victorian Government also notes that many students will go on to become business operators themselves. The Government will explore opportunities for early education to include information about the rights of employees and also help students to understand their rights and obligations as future employers.</p>

<p>Recommendation 8 (page 48)</p> <p>The Victorian Government investigate mechanisms to educate Victorian employers and employees about their rights and assist with the enforcement of workplace laws.</p>	<p>Support in full</p>	<p>The role of providing education to employers and employees about their rights and obligations is a key function of the Commonwealth Government and its agencies under the Commonwealth Fair Work regime. The Victorian Government will also investigate other mechanisms to educate employers. Some education functions can be undertaken by the proposed new Victorian Wage Inspectorate (see the response to recommendation 6) especially in relation to Victorian laws but this should not duplicate or derogate from the proper resourcing of this function by the Commonwealth Government.</p>
<p>Recommendation 9 (page 48)</p> <p>The Victorian Government investigate the inclusion of a penalty rates guarantee in its procurement policies.</p>	<p>Support in full</p>	<p>The Victorian Government recognises that this recommendation has implications for its procurement policy, and cost and competition implications for businesses that are complying with the law.</p> <p>Suppliers of goods and services to the Victorian Government are already required to abide by their legal obligations, and this includes paying award or enterprise agreement pay rates, as well as compliance generally with the FW Act.</p> <p>In investigating this recommendation, the Government will ensure that the interests of stakeholders are properly considered.</p>