

Submission to the Productivity Commission

Inquiry into the performance of the workplace relations framework



Prepared by the National Retail Association

18 September, 2015

1.0 Overview

The National Retail Association strongly endorses the Productivity Commission's observations in relation to Sunday penalty rates, specifically that they be brought into line with Saturday rates. Based on our experience of nearly 100 years serving Australia's retail sector, and drawing from the feedback and data provided by the membership of Australia's largest and most diverse retail organisation, we believe the following statements made by the Commission in its draft report are true, and have been shown over time to be true.

- Employment and hours worked on Sundays would rise after the change. Lower regulated penalty rates are likely to increase the opening hours of businesses and encourage higher staffing ratios, with the job opportunities that this presents for people.
- It would also provide a greater capacity to employ more experienced, often permanent, employees (whose hourly labour costs are particularly high under current penalty rates).
- Lower penalty rates would also be likely to reduce the incidence of weekend work by small business owner managers, who often work long hours to avoid high labour costs.
- There are relatively few workers in the wider industry who work solely on Sundays.
- There will be positive outcomes for people who cannot currently obtain jobs in the relevant industries.
- In the longer run, consumers would benefit from more convenient access to services they value highly and, in some cases, lower prices.
- Failure to recognise the current impacts of high Sunday rates in the relevant industries will also have longer run effects by frustrating new business models (and the employment they can bring).

In order to support this position, this document provides relevant information on the current state of the Australian retail industry in terms of productivity growth, workforce composition and consumer shopping habits. It also provides direct feedback from retailers in relation to the restrictions Sunday penalty rates place on their businesses.

2.0 Labour Productivity and Growth

Productivity is a key measure for any economy, as it indicates how efficiently inputs, such as labour and capital, are used to produce an output, such as a good or service. Further, productivity is also directly linked to living standards, with any increase in living standards almost entirely dependent on how well an economy can increase output per worker. Essentially, a productive economy means that more things can be produced in a sustainable manner.

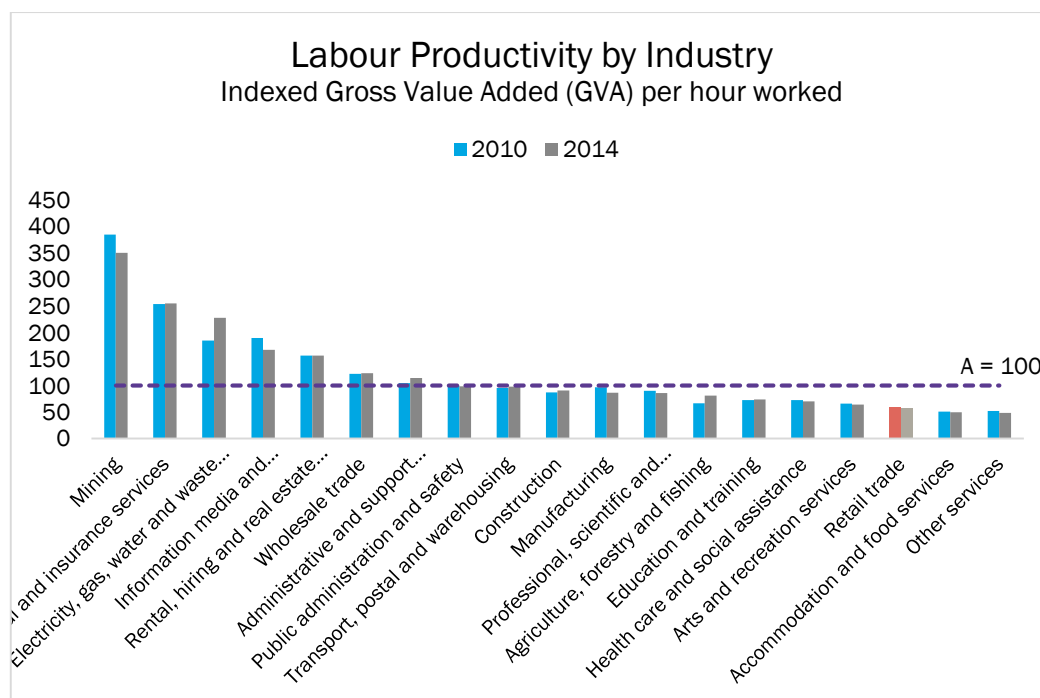
Labour productivity, which is the value of output per hour worked, is a specific measure, which is central in determining wages, as the more productive an employee is, the more they can expect to be paid.

Labour Productivity is calculated as follows:

$$\text{Labour Productivity} = \frac{\text{Gross Value Added}}{\text{Total Hours Worked}}$$

Based on this equation, labour productivity has been calculated for the retail industry, as well as all other major industries in the Australian economy. The chart below displays labour productivity by industry, in 2010 and 2014, calculated as output per hour worked, relative to the entire Australian economy (A=100).

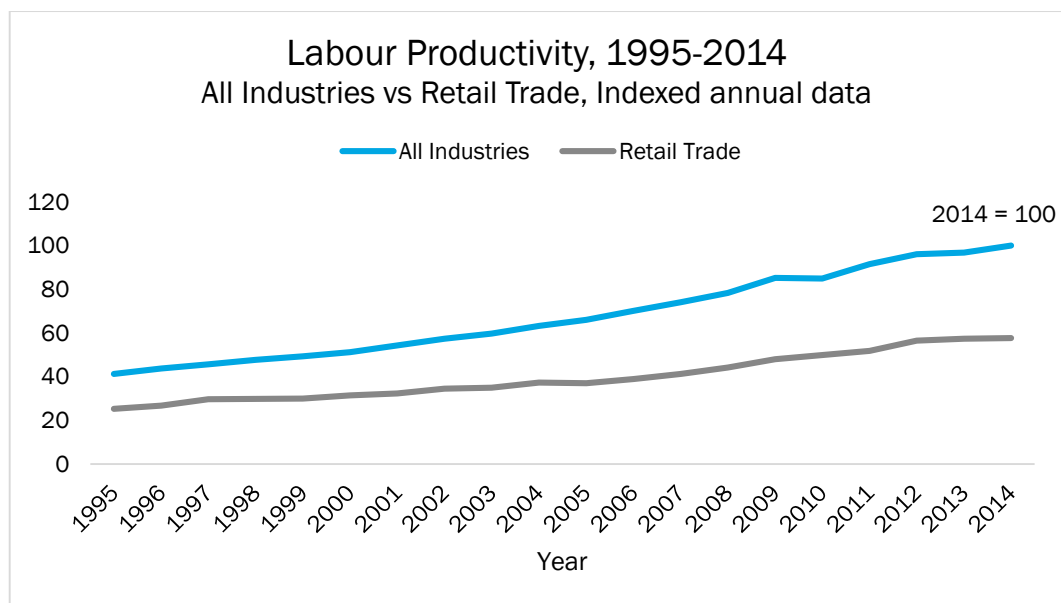
Mining has the highest level of productivity of any industry in Australia, and was 251 percentage points higher than the national average in 2014. Significantly, in 2014, the labour productivity of retail workers was 42 percentage points below the national average, making it one of the lowest performing sectors of the economy.



Source: ABS

2.1 Labour Productivity, Wages and Retail

Since 1995, labour productivity in Australia has grown at 4.8 per cent each, while retail trade has only had an historic growth rate of 4.5 per cent. As indicated in the chart below, the lower long term growth rate in the retail industry, has a significant impact, when considered across a twenty year period.



Source: ABS

In particular, while retail trade was only 16 percentage points below all industries in 1995, in terms of labour productivity, this figure expanded to 42 percentage points by 2014. Essentially, this highlights the specific challenge of the retail industry, and its workforce, in terms of increasing productivity at rates similar to other industries. This is particularly relevant for wage increases within, and across, industries.

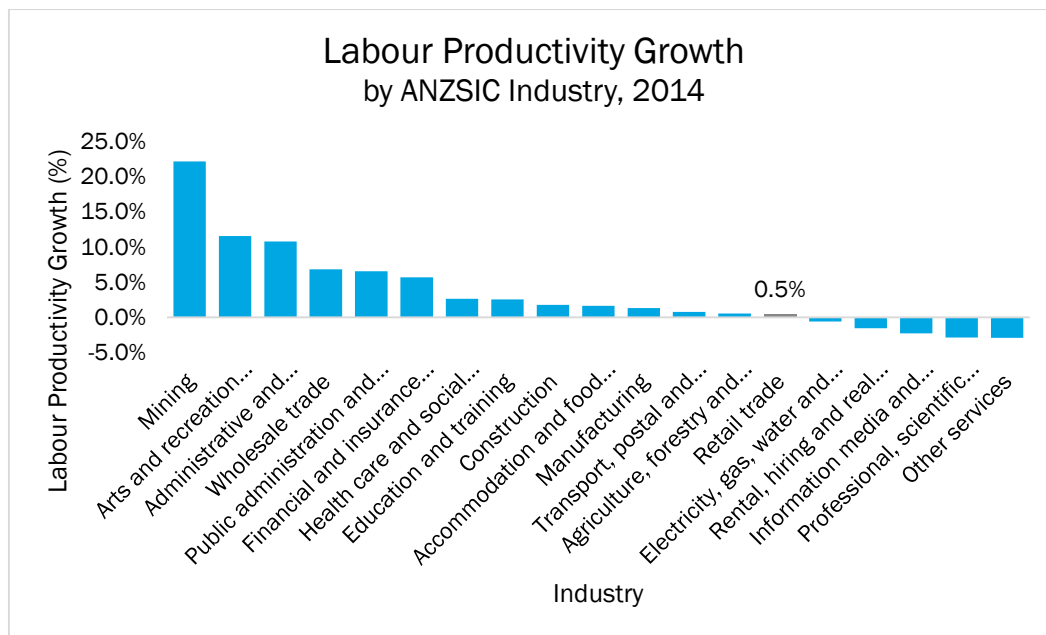
2.2 Low Productivity and Wage Increases

Baumol's Cost Disease¹ considers the occurrence of wage rises in industries that experience minimal, or no, labour productivity increases over time. Essentially, the effect highlights how industries, with little or no productivity gains, are pressured to increase wages, as a result of wage increases in industries that did experience productivity gains.

In the instance of the retail industry, if employers pay store managers lower wages, the managers may be inclined to quit, and find employment in an industry with higher labour productivity, and therefore higher wages, such as mining. Therefore, the wage of a retail manager does not increase because of improved labour productivity in the retail industry, but rather because of productivity and wage increases in other industries.

Indeed, the chart below highlights that the labour productivity growth in the retail industry in 2014 was almost zero, with a growth rate of 0.5 per cent in 2014. This makes the retail industry one of the lowest performing sectors of the economy, in terms of labour productivity growth. It is argued that an industry, which has not achieved a significantly higher level of productivity in recent years, can justify, or sustain, an increase in wages at this time.

¹ See, for example: Baumol, W. J. (2012). *The Cost Disease: Why computers get cheaper and health care doesn't*. New Have: Yale University Press.



Source: ABS

Key Message: Productivity growth within the Australian retail industry does not currently warrant an increase in wages.

3.0 Consumer Shopping Habits and Labour Demand

Research suggests that in the past twenty years, Australia has changed significantly, with profound shifts occurring in how people live their lives. In particular, the nation is increasingly cosmopolitan, defined by cultural diversity, and a desire for a more global approach to food, communication, recreation, and significantly, the retail experience.

Specifically, the preferred shopping day for many Australians is Saturday, although an increasing proportion of people indicate that Sunday is the day when they most like to shop². However, Australians are also opting for more frequent visits to retail sites, and supermarkets in particular. This is especially the case for families in which both parents work, and where children maintain a busy schedule across school and extra-curricular activities. Essentially, there is an increasing need for retail businesses to operate flexible trading hours, which are convenient to their customers. An important aspect of convenience is that a store is open at a time and day when a customer prefers to shop³. As indicated above, Australians increasingly prefer to shop in the evenings, and on weekends, with Sunday becoming an increasingly popular choice for many customers.

² Quantum research

³ Ergas, H. (2014). *Economic Impacts of Deregulating Retail Trading Hours on Queensland's economy*. Unpublished manuscript.

3.1 Elasticity of Labour Demand

The changing preferences and expectations of customers is having a significant impact on retail businesses, with retailers adjusting their hours of operation to cater for shifts in social and cultural norms. As indicated above, this means that retailers are needing to open on weeknights, and weekends, in order to provide goods and services at a time that is most convenient to customers. However, these preferred hours of trading are also subject to penalty rates, which significantly impacts the capacity for retailers to employ team members, at times when the business is likely to be most productive.

In this instance, elasticity of labour demand suggests that an increase in wages, which is produced by penalty rates, will result in a reduction in labour demand. There is an indication that this occurs within the retail industry, with many employers and business owners, especially those operating small to medium enterprises, not opening at a times that incur penalty rates. Essentially, the costs associated with employing staff, during times that are impacted by penalty rates, negates the benefit of being open for trade, and selling goods and services. This means that the elasticity of labour demand is high within the retail industry, and this is particularly evident in trading hours outside of the traditional work day, which is 9am to 5pm, Monday to Friday.

4.0 Businesses' attitudes

The issue of Sunday penalty rates is one of the most common themes raised with the NRA by our members and the wider retail community. It is a source of genuine frustration and anger among retail business owners. The following are examples of the communication we have received on this issue in recent weeks.

4.1 Tourism retail business owner – Hunter Valley

When the last Labor Govt introduced Fair Work Australia, they tinkered with 2 employing bodies only - retail and hospitality. They have introduced excessive penalty rates, and the rates of pay for unskilled labour is ridiculous...

I have friends who are in skilled work not earning the same rates as retail, so now they want a job with me.

As the hospitality industry/restaurant and catering are saying, we want a level playing field. If the Govt and Fair Work won't look after us, we want every other industry's pay rates and scale on the same playing field as ours. Then maybe people in general will stop complaining about the cost of a meal and the cost of an item etc.

With social media these days as soon as you put your prices up to try and cover wage rises everybody gets on the band wagon and howl your business down. And in some cases close businesses down.

If Fair Work Australia want us all to go back to 9 to 5, Monday to Friday, and 9 to 12 noon on a Saturday with no Sunday and no public holiday trading, they are on the right path.

Sorry but I am very angry.

4.2 Sporting goods retailer - Bundaberg

We are a sporting retailer who is located in Bundaberg. We currently have 8 FTE employees. The current economic climate has meant that we have not replaced a full time staff member who retired and have cut approx. 50 casual hours a week from our roster.

We currently don't trade on a Sunday - this is mainly due to the cost of doing so with penalty rates. Other times of the year when we find that penalty rates are prohibitive are Easter. When the only day that is not a public holiday is Sunday. We simply cannot afford to pay staff public holiday rates for the surrounding 3 days of trade.

4.3 News Agent – Melbourne

My wife and I have worked every Public Holiday since 2002. On principle we will never pay the rates as they are.

On Sundays we lose money to keep our business open 7 days per week in the hope of maintaining our customer base.

Our business cannot afford increased wages so as rates increase, paid hours must decrease. Casuals/juniors/students/weekend staff will be the losers as we manage these expenses moving forward.

4.4 Jewellery store owner – Gold Coast

We operate six retail jewellery stores on the Gold Coast – four in shopping centres and two street frontage. It is a requirement of our lease to open the stores in the shopping centres on weekends & public holidays. As a jewellery store it is also necessary to have staff to open & close. The current wage rates absolutely cripple independent operators. Most large enterprises have EBAs which are too costly to introduce in a small business. Therefore we are on the back foot from the start. I would without a doubt open longer hours and employ more staff if penalty rates either didn't exist at all or were reduced. I don't open the street frontage stores on Sundays & Public Holidays as the figures just don't add up at all.

We live in a tourist destination where seven day extended trading is an expectation of our visitors but with current wage levels it is impossible to maintain staff for these hours given the sometimes very slow foot traffic. Shopping centres also charge us for opening Sundays & Public holidays so we get a double whammy with the penalty rates on top.

4.5 Fashion store - Cairns

We have had a business for 5 ½ years in Cairns and have seen one of the biggest and longest downturns in Cairns with so many businesses closing during this period. We found each year was getting slightly better until two years ago when retail took an even bigger downturn here. Whilst we are trying to survive we are finding that even though our turnover has dropped dramatically. Our outgoings keep going up, with wages being a big part of this. I totally understand businesses who operate Mon-Fri should pay penalty rates on Sat/Sun as they are asking staff to come in and do some work when that business would not be generally open. Business, like ourselves, who operate seven days a week should not have high penalty rates on Sundays and public holidays as these are part of our normal operating hours. My husband and I work the Sunday and all public

holidays and generally have Fri/Sat as our weekend as we could not afford to pay staff for Sundays or Public Holidays. We have had and currently have one staff member who is a university student and because of study commitments is only available for work on Fri mornings, Saturday and Sunday but due to Sunday penalty rates they have missed out on us giving them a shift on Sundays. We have a business next door to us that has been operating over 25 years and only recently has stopped opening on Sundays as the cost has become too great.

5.0 Workers' Attitudes to Sunday work

Regardless of the level of penalty rates, many people prefer to work outside traditional business hours. This group can include students, parents juggling child-minding responsibilities, those aspiring to managerial duties, and those seeking a second job to help with their finances. In many cases, these people are being denied opportunities because of the penalty rates associated with this work. The NRA submits that the penalty rates regime has ceased to be a safety net for these workers, and has instead become a financial and professional encumbrance.

Retail industry associations have engaged Deloitte Access Economics to undertake a study of both workers and employers to gauge attitudes to working or operating a retail business outside of standard business hours. The research found:

- Different Australian workers have different preferences, with casual and part-time workers having a stronger preferences for working Sundays. Many workers are unwilling to work atypical hours regardless of penalty rates;
- A strong desire to work hours that suit family or personal routines – e.g. 86 per cent of females aged 25-34 preferred evening or night work. Others (for example, university students) prefer to work on the weekends rather than during “standard” hours as it does not interfere with their other commitments;
- There is declining participation in historically typical weekend activities such as church attendance or weekend sports participation;
- A majority (54 per cent) of Saturday workers indicated they had either no problem or only minor problems with weekend work. A similar percentage of Sunday workers (53%) also reported no or minor problems.

6.0 Institutions

The NRA supports the proposed amendments to the Fair Work Act outlined in recommendation 3.1, which would establish a minimum standards division of the Fair Work Commission. Consequently, we also support recommendation 3.4 relating to separate appointment criteria for the two sections of the Commission, on the proviso that technical specialists should have a minimum of 10 years' experience working in employment law.

We support the recommendations relating to appointment to the Fair Work Commission detailed in recommendations 3.2 and 3.3. We also support draft recommendation 3.5, which relates to greater scrutiny and transparency around the conciliation process.

7.0 National Employment Standards

The NRA supports recommendations 4.1 and 4.1 of the draft report, relating to substituting public holidays for alternative days of leave, and ensuring employers are not liable for additional costs associated with states and territories creating new annual leave days.

We do not support any extension of the current provisions for paid annual leave in the National Employment Standard, as canvassed in recommendation 4.3. This would be an additional cost to business and an unreasonable impost on business owners. Effectively, such a move would amount to a reduction in productivity, and would certainly lead to job losses.

8.0 Unfair dismissal

The unfair dismissal laws are another area of major concern for business owners. The NRA supports all efforts to simplify the process, and to weed out unfounded or vexatious claims prior to the conciliation process. We support recommendations 5.1, 5.2, 5.3 and 5.4. We iterate the NRA's preference that small business is completely excluded from this jurisdiction altogether.

9.0 The General Protections

The NRA opposes the continuation of General Protections Applications, especially given that they impose a revers onus of proof and impose substantial penalties for both employer companies and individuals who are knowingly involved in contraventions of the relevant provisions. We suggest a reversion to the position prior to the introduction of these provisions namely the freedom of association and unlawful termination provisions. If General Protections Application are retained we suggest:

- a) a maximum compensation threshold - aligned with that in the Unfair Dismissal jurisdiction;
- b) removal of the revers onus of proof;
- c) reduction of the maximum penalties that may be imposed to at least half of the current levels; and
- d) we support the current recommendation regarding discovery.

We support draft recommendations 6.2, 6.3, 6.4 and 6.5.

10.0 Minimum wages

The NRA supports draft recommendation 8.1, which calls for changes to the decision making process for the minimum wage.

We also support draft recommendation 9.1, provided that is not used to enable parties to advance claims. We believe this power should be limited to extreme economic circumstances (such as the GFC) where the ability of business to function in those circumstances under current minimum Award conditions will be affected.

And we endorse the Productivity Commission's suggestion of a review of apprenticeship and training arrangements, contained in draft recommendation 9.2.

11.0 Modern Awards

The NRA supports draft recommendation 12.1, which calls for the removal of 4 year review of Modern Awards. We believe the Minimum Standards Division should only conduct a review where substantial economic changes warrant this in each industry (e.g. GFC), to ensure certainty and stability of labour conditions and to enable business to be more productive.

We support the remainder of this recommendation, provided that "public guidance on reform" is not used as an opportunity for parties to vary Awards. It should be based on genuine economic circumstances relating to each particular industry at the time. Also, when Awards are reviewed, any variations should not automatically flow to Awards in other industries.

We also support recommendation 12.2, giving the Minimum Standards Division of the Fair Work Commission the same power to adjust minimum wages in an assessment of modern awards as the minimum wage panel currently has in annual wage reviews.

12.0 Enterprise Bargaining

The NRA supports recommendations 15.1 through to 15.7 relating to reform of the enterprise bargaining process.

13.0 Individual arrangements

The NRA supports draft recommendations 16.1, 16.2 and 16.3.

14.0 Industrial disputes and right of entry

The NRA shares the concerns of employers and employer organisations regarding union behaviour, which have resulted in recommendations 19.1 through to 19.8. Consequently, we support all these recommendations.

15.0 Independent contractors

The NRA supports recommendation 20.1, in relation to independent contracting arrangements.

16.0 Migrant workers

We strongly support actions to prevent the exploitation of migrant workers, and endorse stronger penalties for employers who break the law in this area. We endorse draft recommendation 21.1. We also believe the current Migration Act should be amended to provide express right for employer and employee organisations to provide general guidance to members about employing migrants without falling foul of provisions which require advice to be given only by qualified migration agents/lawyers.

17.0 Transfer of business

We support recommendation 22.1. We believe this is a sensible and fair solution – one which protects the rights of employees but does not inhibit business transactions.

18.0 Summary

The release of the Productivity Commission's draft report generated a level of high profile opposition in the media. However, we do not believe that the high profile media reporting of this issue, focusing as it does on claims of penalty rates being stripped away, is either true or reflective of modern community standards. As we outlined in section 5.0, there is a large – and growing – section of the workforce that does not view Sunday as a special day, or one with any greater significance than Saturdays. Indeed, there are many who prefer to work on a Sunday.

The Commission has rightly asserted that a move to a single weekend penalty rate would increase employment opportunities on Sundays, with more capacity for businesses to offer work to more experienced employees. It would allow small business owners, such as those quoted in section 4.0 of this submission, to reduce their own involvement in their businesses. It would cut costs to consumers. And it would address a serious threat to the viability of the Australian retail sector – specifically the fact that local businesses now compete against international on-line retailers who are not hamstrung by the Australian workplace relations model.

Given that modern consumers are wanting to shop at times when retail businesses incur penalty rates, it is extremely difficult for some employers and business owners in this industry to adequately accommodate the needs and expectations of their customers, while covering the increase in labour costs. Further, given the low levels of productivity in this industry, relative to other sectors of the economy, and the minimal levels of year-on-year growth to labour productivity, it would seem to be unreasonable to increase the wage costs for an industry which is one of the least capable of absorbing these changes.

The NRA endorses the observations and recommendations made in the draft report, and we encourage the Commission to carry these through to its final document. We look forward to prompt Government implementation of the recommendations.

19.0 About the Submitter

The National Retail Association (NRA) is a not-for-profit industry organisation providing professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia. The NRA is Australia's largest and most representative retail industry organisation, representing more than 19,000 stores and outlets.

The NRA's membership is comprised of members from all the sub-categories of retail including fashion, groceries, department stores, home wares, hardware, recreational goods, newsagents, fast food, cafes and personal services like hairdressing and beauty. It also includes both large and small businesses, including the majority of national retail chains, as well as independent retailers and franchisees, and other service sector employers. The NRA has represented the interests of retailers and the broader service sector for almost 100 years. The NRA's aim is to help Australian retail businesses grow.

20.0 Contact information

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