



## AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

**Opinion Piece by ACCI Workplace Policy Director Peter Anderson for the Australian Financial Review - "Penalty Rates Past Their Use-By Date" – 5 June 2006**

### **Penalty Rates Past Their Use-By Date**

**By Peter Anderson – Director of Workplace Policy, Australian Chamber of Commerce and Industry**

At long last penalty rates are in perspective, writes Peter Anderson.

The recent political controversy about workplace agreements concerning retailer Spotlight brings penalty rates paid by employers into sharp focus.

This is a long overdue and welcome debate. For too long the concept of penalty rates has been abused, and employers have been forced to pay them where they have not been justified or sought.

Penalty rates were originally introduced as a financial disincentive (a penalty) against employing people at non-standard times of the week. Over the years, those working times became standard for many employees, yet penalty rates still had to be paid. That was unfair to employers and small business.

In the retail industry they were introduced years ago to stop employers from employing people on late nights or on weekends, and to compensate for what were (in those days) unsociable hours. This occurred in the era when most shops closed at 5.30pm during the week and from lunchtime Saturday until Monday morning.

In this day and age employing people on Saturday afternoons or on Sundays or on late night trading is hardly strange or unsociable, especially where the employee is, say, a university student for whom those hours are actually preferred.

That we should penalise employment by adding a financial cost to giving someone a job that they find convenient is a ridiculous concept.

This does not mean that all penalty rates have or will disappear. It simply means that a variety of different arrangements will occur in workplace agreements.

Over the past 13 years thousands of workplace agreements have removed penalty rates, but usually incorporated some or all of their value into the wage or other employment benefits.

The result is that most employees in Australia are not paid penalty rates, but are paid more than the base wage. Even though unions don't like to admit it, many have been involved in these agreements. In 1991 I helped negotiate an agreement with the Shop Assistants Union in

South Australia to get rid of the 25 per cent late night penalty rate, the 30 per cent night shift penalty rate, the 25 per cent Saturday morning penalty rate and the 50 per cent Saturday afternoon overtime rate, in exchange for a payment of 5.25 per cent on the weekly wage. It was an agreement that worked well even though some casual employees at the time lost more money in penalty rates than they gained in base salary.

So long as penalty rates can't be taken off people against their will, the fact that penalty rates don't have to be paid or equivalently cashed out in every situation is fair, and will help create more jobs.

Despite the hoo-ha about penalty rates in the Spotlight stores, no employer is allowed to take away a penalty rate that an employee is now entitled to. The only way that a penalty rate paid to an employee can be changed is if the employee reaches a written agreement lodged with the government regulator that specifically says that work is agreed to be done on a non-penalty-rate basis. True, new jobs can be offered without penalty rates having to be offered, but only if those terms are accepted by employees.

The WorkChoices law protects against exploitation because no base wage can be less than the award wage. The bottom line is that penalty rates have been changed by workplace agreements for the past decade. There is now more flexibility to do so, but the extent that this happens will depend on the labour market and the base wages that must be paid to recruit and keep good staff. So long as there is no coercion to make agreements and so long as a fair base wage is paid, then employers offering work without penalty rates should be unremarkable.

If it also means more job offers to the 500,000 unemployed and a chance for them to get a foot in the door of the labour market and off the dole queues, that will be an added bonus.