



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

**Fair Work Amendment (Small Business
—Penalty Rates Exemption) Bill 2012**

Second Reading

SPEECH

Thursday, 16 August 2012

BY AUTHORITY OF THE SENATE

SPEECH

Date Thursday, 16 August 2012	Source Senate
Page 5526	Proof No
Questioner	Responder
Speaker Xenophon, Sen Nick	Question No.

Senator XENOPHON (South Australia) (12:00): I present the explanatory memorandum and I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The speech read as follows—

FAIR WORK AMENDMENT (SMALL BUSINESS – PENALTY RATES EXEMPTION) BILL 2012

It is with both great pleasure and a little trepidation that I introduce this bill.

I am pleased because I believe this bill will trigger a discussion we urgently need to have.

But I also know this is an issue that some people consider 'too hot' to touch.

Penalty rates are a contentious subject. There is no doubt that workers deserve a fair day's pay for a fair day's work, and penalty rates have played a part in that concept since the 1950s.

But things have changed in the last sixty years.

In many industries, we now have a seven day working week. While weekend penalty rates were originally intended to acknowledge employees' work outside the standard five-day working week, there are now many employees who consider their ordinary hours to include weekends, evenings and early mornings.

This bill is an attempt to balance the need for penalty rates and the strain they are placing on small businesses.

A Benchmarking Report by Restaurant and Catering Australia conducted late last year found that 18.2 per cent of respondent businesses reduced their hours because of the increase in penalty rates. Almost one third of the businesses said they employ fewer staff because of high labour costs.

And a significant 70.9 per cent of businesses indicated they would reduce the number of staff further if labour costs rose in the next twelve months.

Based on the average shift length of four hours, it means 509,356 shifts were lost during the year as a result.

That equals 2,945 jobs in the industry.

The same report found that 90.5 per cent of businesses ranked wage pressures as a major difficulty in running their business.

It is also important to note that Peter Strong, Executive Director of Council of Small Business Australia, has indicated his support for this bill. Mr Strong has worked closely with the Gillard Government on small business issues for many years, and I appreciate his support. I should also point out that he has recently shut his own business, a bookshop, on Sundays.

Mr Strong said in the media: "We need a workplace relations system that reflects the realities of the modern world. The current approach to penalty rates has cost the jobs of people who can only work on weekends and was not developed with a view of the needs of the whole community. University students, school students, women who can only work on weekends and others have lost income."

The aim of this bill is to acknowledge that many small business employees are missing out on shifts or even jobs because small businesses simply can't afford to open on days with high penalty rates.

My office is located on Rundle Street in Adelaide, an odd mix of high end designer stores and quirky small businesses. But recently, it's become much quieter on weekends.

I've spoken with small business owners from that precinct and elsewhere who have had to downsize to stay open on Sundays, and others who have decided to reduce their employees' shifts and close on Sundays.

And I've spoken to casual and part-time employees who say that, while they love their penalty rates, they'd be happy to get more shifts and work an extra day in exchange.

I appreciate not all people will feel like this. I do not like the idea of anyone being disadvantaged, but I believe this is a debate we need to have. It's clear there are many employees who are already being disadvantaged and being deprived of extra hours of work on weekends.

The provisions in this bill state that an employer in the restaurant and catering or retail industries who employs fewer than twenty full-time equivalent employees will not have to pay penalty rates during a week except where employees have worked more than ten hours in a twenty-four hour period or thirty-eight hours in one week.

The aim of this is to compensate employees who work outside the traditional thirty-eight hour week, or over what could reasonably be considered a working day. The definition of a small business as fewer than twenty full-time equivalent employees comes from the definition used by the Australian Taxation Office, as the general consensus in the industry is that the Fair Work Act definition of fifteen FTEs is too low.

These conditions will apply to all relevant current and future modern awards.

I look forward to the submissions, both for and against the bill, to the Senate Inquiry that I trust will ensue.

I know this bill will start a furious debate, and I hope it can be a constructive and useful one.

If it is not, if we cannot find some sensible common ground, then both small businesses and employees, including prospective employees, will end up being disadvantaged.

Senator XENOPHON: I seek leave to continue my remarks later.

Leave granted; debate adjourned.