

UNIONSWA

Submission by UnionsWA on the Productivity Commission Draft Report into the Australian Retail Industry

Phone: 08 9328 7877

Fax: 08 9328 8132

Street Address: Level 4, 445 Hay St, Perth WA 6000

Postal Address: PO Box Z 5380 St Georges Tce, PERTH WA 6831

Please address all correspondence to the Secretary

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UnionsWA is the state's peak union body, representing over 30 affiliated unions and over 170,000 members.

UnionsWA is concerned about the issues relating to the pay and conditions of retail workers raised in the Productivity Commission's Draft Report on the Economic Structure and Performance of the Australian Retail Industry. The following submission has been prepared in consultation with the retail employee's union.

WA unions are committed to working with retail employers to ensure the ongoing viability of the industry. However, we have grave concerns about some of the suggestions being put forward as potential solutions to the challenges confronting the Australian retail industry. In particular, calls to undermine current working conditions for retail workers in the name of improving productivity.

Reducing working conditions to solve an industry's problems sets a worrying precedent. It is an approach commonly advocated by employer groups but there is no evidence that it actually results in improved productivity.

Undermining working conditions will also work against the Draft Report's other findings on 'Employment, skills and training', particularly that

*The retail sector in the future will also require a more highly skilled workforce including employees with good IT skills who have knowledge of website interface technology to support the move into online retailing. Depending upon the extent that retailers choose to compete on the services they offer rather than primarily the price they charge there may be greater need to develop a workforce with higher customer service skills and a longer term commitment to the retail industry. This can be achieved by employers providing higher rates of training to develop relevant skills, the development of incentives to encourage employee productivity, **and the pursuit of higher rates of employee retention to capitalise on investment in training.** (Report page 347)*

The industry will not retain employees if it attacks their pay and working conditions. Reducing the pay of workers who are already among the lowest paid in the nation will not be a productivity-enhancing 'saving'. Instead social costs will be shifted to the Australian taxpayer in terms of welfare provision through the tax/transfer system. We highlight that, in making international comparisons, the Draft Report does not compare measures such as numbers of retail employees living below the poverty line.

The wrong approach to judging productivity

As one of Australia's largest industries, employment conditions in retail are an issue of major importance. Retail workers are not highly paid and any reduction

in rates of pay, removal of penalty rates or reduction in minimum shift times will have a significant impact on hundreds of thousands of Australian families.

The approach used by the Draft Report to demonstrate that labour costs in the industry undermine productivity, the ratio of employee compensation to retail sales compared to the UK and the US, is unrealistic. This is because no account is taken of the differences in work done within a given hour of retail employment in each country. Reducing the compensation costs within a given hour of employment for a worker is unlikely to increase (and will probably reduce) the productivity of that worker within the hour.

A tested and failed policy

There is no evidence to suggest that workplace changes, such as those proposed to penalties and wages, would actually improve productivity. In fact, previous experience indicates that policies implemented to reduce working conditions in the past have not resulted in productivity gains for the Australian economy.

The most recent example is the WorkChoices legislation implemented by the Coalition Federal government in 2005. Under WorkChoices, many thousands of working Australians had their working conditions undermined. The logic behind this was that greater flexibility would assist in increasing productivity.

Many workers and their families were significantly worse off as a result of this policy and the promised increase in productivity did not occur. The recent Grattan Institute report on *Australia's productivity challenge* found that labour productivity reached new lows during the WorkChoices period (roughly 2006 to 2009):

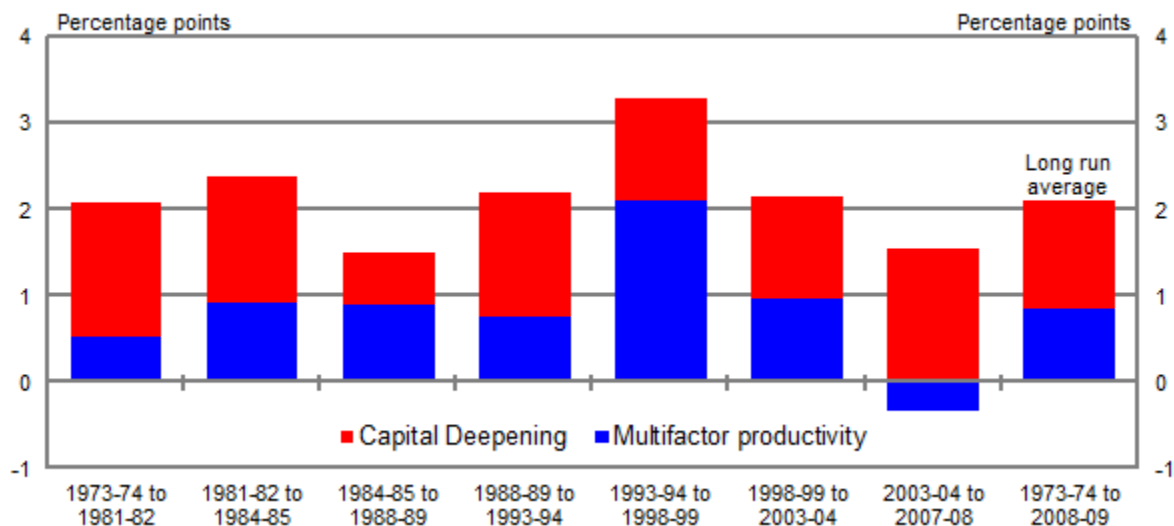
*[F]or the economy as a whole, labour productivity growth rose steadily during the 1990s to peak at 2.8% pa over the five years ended 2001-02, well above the long-run average rate of 1.6% pa; **but slowed dramatically during the ensuing decade, reaching a low of just 0.8% during the five years ended 2008-09.**¹*

In a recent speech Treasury Secretary Dr Martin Parkinson presented figures showing that multifactor productivity actually pushed into negative territory during the WorkChoices period:²

Chart 13: Productivity — growth cycle analysis

¹ Grattan Institute, *Australia's Productivity Challenge*, p.14 (2011)
http://www.grattan.edu.au/publications/069_productivity_challenge.pdf [accessed 24 August 2011]

² Dr Martin Parkinson, 'Opportunities, Challenges and Implications', p.26 (17 May 2011)
http://www.treasury.gov.au/documents/2036/PDF/martin_parkinson_20110517.pdf [accessed 24 August 2011]



Source: ABS Catalogue Number 5206.0 and Treasury.

Cutting the conditions of retail workers will not solve the industry's productivity problems and may make them worse.

The Grattan report also makes the point that productivity is not achieved by working longer hours, or by working 'harder'. It is achieved by working smarter, i.e. getting more out of the work that you do.

Therefore reflexively turning to workplace reform for productivity growth is evidence of lazy thinking on the part of both employers and governments. It reflects a failure to think through the real needs of the retail industry. It may also be wishful thinking that reducing wages and conditions will create the environment of employees and employers working together cooperatively and creatively that the Report identifies (page 287) as being necessary to deliver productivity improvements.

Damaging recommendations for workers and the industry

Unions are, therefore, strongly opposed to any recommendations that advocate for the following in the name of spurious 'reform'

Reduced take home pay

Workers in the retail industry are not highly paid. The Draft Report's Appendix C on 'Wages earnings outcomes and trends' finds that:

Average weekly ordinary time earnings (AWOTE) for full time adult employees in the Retail trade industry increased, in the most recent 12 month period ended February 2011, by only 0.7 per cent. This was less than one fifth of the growth rate for all industries (3.8 per cent). For the five and ten year periods ended February 2011, AWOTE in the Retail trade industry grew at an annualised rate of 3.5 and 4.1 per cent, compared with rates of 4.7 and 4.8 per cent for all industries. (ABS 2011b)(page 374)

'Incentive pay' as a way to cut wages

Workers must be paid for the work that they do. Deteriorating conditions in the retail industry mean any move towards incentive-based pay would effectively be

a pay cut for the majority of workers many, of whom are already low paid. 'Incentive pay' would also increase financial uncertainty for those workers. Further to this, we note that the calls for incentive-based pay do not seek to limit such arrangements to specific sectors of the industry and as such there seems to be little or no consideration given to the diversity of retail.

For example, while incentive pay might be argued to provide some benefit in high-end fashion and bulky consumer goods retailing, it would be practically impossible to fashion a fair and workable arrangement in a supermarket, or a discount department store. Further, the Draft Report does not provide much in the way of evidence to support the contention that commissions increase productivity. It notes that such schemes are more prevalent in the US, but offers no comparison of Australian versus US productivity figures. For example, the Retail Traders Association (RTA) of WA submission notes '(c)ommissioned base remuneration would greatly assist the industry's productivity...'.³ Such a claim, in the absence of any evidence, is mere speculation at best. It would appear that such claims may simply be wishful thinking, aimed at moving some of the effects of lower sales turnover from the business to the employee. To this we say that Australia has a strong history of setting minimum wages such that employees can live with some measure of comfort and dignity. Any attack on such wages should be seen for what it is – not a way to boost productivity but merely a means to shift risk from employers to employees.

The submission by the Westfield group quoted in the Draft Report reveals the true agenda of 'incentive pay' as proposed by employers (page 300). In the light of the Draft Report's own evidence that retail workers are not highly paid, Westfield's complaints about 'high basic wages' preventing them from offering incentive pay shows that such an approach is a Trojan horse for pay cuts.⁴ Flexibility for employers means flexibility to reduce pay – not increase it.

Abolishing or reducing penalty rates and weekend work

Penalty rates were established with the purpose of compensating workers whose job requires that they work unsociable hours meaning that they generally have less time to spend with their family and friends. Many workers rely on penalty rates to make ends meet and any reduction in penalty rates would have a significant impact on the finances of thousands of households.

The conclusions drawn by the Draft Report are often assertions without evidence. For example, on page 305, the Commission states that '(s)ome workers appear to be very comfortable with (or even prefer) weekend and evening work and for these people the additional pay incentive does not need to be great.' This ignores the very real likelihood that the reason people work these hours is *because* of the higher rates of pay.

The Report then further states on page 305 that '(i)f work at existing penalty rates is keenly sought, then this would tend to suggest that workers are not

³ RTA WA submission (no.80), p.17

http://www.pc.gov.au/data/assets/pdf_file/0004/109741/sub080.pdf [accessed 1 September 2011]

⁴ Westfield Submission (no.103), p.23

http://www.pc.gov.au/data/assets/pdf_file/0010/110125/sub103.pdf [accessed 24 August 2011]

finding such working time inconvenient.’ Again, this is flawed logic. Consider, for example, a retail worker with school-aged children. Such a person usually finds working every weekend very inconvenient – however, given the low rates of pay in the industry, the additional penalties available may be a necessity to maintain a level of income sufficient to sustain a family that includes those children. At best, the Commission might be able to conclude that such an employee has made an economic decision that the utility gained from the extra income is sufficient to compensate the lost utility from spending weekends with their family – it does not, however, support the statement that the employee suffers no inconvenience.

Finally, page 305 also cites the Australian National Retail Association (ANRA), which makes a similar assertion, but does recognise the significance of penalties. It notes that ‘ANRA members report that they have no difficulty finding volunteers to fill shifts on public holidays and weekends, with many employees welcoming the flexible working arrangements that retailing offers.’ This seems to suggest that an employee who works on New Year’s Day does so because it is convenient for them – part of the flexible working arrangements that retailing offers. However, the ANRA then notes ‘(f)or example, Easter Sunday bears no significance for non-Christian employees who may welcome the opportunity to earn penalty rates.’⁵ This statement is significant in two respects. Firstly, it recognises that penalties are an incentive and suggests (albeit carefully) that some employees will respond to this. Secondly, however, it raises this point: if retailers are free to roster whenever they like because, as they have argued they need flexibility to meet customer needs, then in the absence of non-Christian volunteers, the Christian employees may well find themselves forced to work on a day which is conceded by the ANRA to be of significance to them. Furthermore, the likelihood of volunteers coming forward will be much reduced if the incentive (i.e. the penalty) is removed.

Undermining Awards and unfairly blaming modernisation

The Report also presents a curious and flawed (but not original) argument from Woolworths. On page 306, in a section of the report discussing award flexibility, Woolworths is cited as saying ‘...it would be appropriate to undertake a review of the penalty rate arrangements contained in that (the General Retail Industry) Award to ensure that retailers are able to have flexibility to employ and use their staff in a way and at times that best serve the needs of customers.’⁶

Award penalty rates are often cited as impediments to flexibility. They are not. An employer has the flexibility, under either the ordinary hours of work (clause 27 of the Award) or the shiftwork provisions (clause 30 of the Award), to roster employees throughout any hours of the day or night on any day of the week. What Woolworths is objecting to (without actually saying so) is the rates paid. This is the sophistry that companies often employ – to argue for flexibility (which they already have) when they are actually arguing to reduce labour costs. It is also significant to note that, while companies such as Woolworths have the freedom to trade 24 hours a day 7 days a week in Western Australia (in locations

⁵ ANRA submission (no.91), p.21

http://www.pc.gov.au/data/assets/pdf_file/0003/109776/sub091.pdf [accessed 1 September 2011]

⁶ Woolworths Submission (no.110), p.16

http://www.pc.gov.au/data/assets/pdf_file/0017/110195/sub110.pdf [accessed 1 September 2011]

above the 26th parallel), they do not trade beyond 9pm on any night. Woolworths' failure to trade beyond 9pm is not a flexibility issues, as they have the ability to roster employees after 9pm under the terms of the Woolworths National Supermarkets Agreement, and it cannot be a penalty rate issue because that agreement does not require penalties to be paid until midnight.

It is also significant that the Report, seemingly on the basis of the submissions made by employers and their representatives, accepts the notion that the General Retail Industry Award is responsible for introducing new penalties where none previously existed and has increased costs everywhere. This is simply not true. Retail Awards throughout the country have always provided penalties for late nights, Saturday, Sundays and Public Holidays. It is pointed out that in some states (e.g. NSW); the Sunday penalty is increasing from 50% to 100%. This is correct. However, in Victoria, for example, the Sunday penalty was already 100%. In WA, due to the Shop and Warehouse Award treating Sunday as an overtime day, and the transitional provisions not dealing with overtime, the effective penalty rate on Sundays for employees in General Retail shops went from 100% to 20% and currently sit at 40%. Furthermore, the weekly base rate of pay under the General Retail Industry Award when it took effect was actually lower than that provided under the WA Shop and Warehouse Award. This is particularly pertinent in the wake of the assertion from the RTA of WA (cited on page 303) that '(p)enalty rates are at unsustainable levels and have inflicted large cost increases over those under the previous legislation.'⁷ Opposition also comes from those businesses that trade 24 hours a day. Under the General Retail Industry Award, such businesses can operate outside of normal hours using a shift penalty arrangement of 30% - whereas previously all such hours would have been overtime.

It is true that there are some businesses that are experiencing penalties for the first time – being those businesses that incorporated post 27 March 2006. However, it should be noted that such businesses had an arguably unfair competitive advantage over businesses incorporated prior to this time, and the transitional provisions will ensure that all businesses are on an even playing field in 2014.

In summary, the effects of the introduction of the General Retail Industry Award are, in our view, not properly presented in the report and as such, the Commission should undertake a full and proper analysis of these effects if it wants to draw any conclusions about them.

'Flexibility agreements'

Awards provide an essential minimum level of conditions that provide workers with a degree of certainty in their employment. Under WorkChoices every Australian Workplace Agreement (AWA) removed at least one Award condition and over half got rid of core conditions such as penalty rates, public holiday entitlements and leave loading. Workers lost out under this process and there is no evidence that productivity increased.⁸

⁷ RTA of WA (no.80), p.17.

⁸ Carolyn Sutherland and Joellen Riley 'Industrial Legislation in 2007', *Journal of Industrial Relations*, (June 2008), p.419.

The Commission itself has also pointed out that the industry has not taken 'full advantage of opportunities' existing under the current Fair Work Act for collective bargaining (page 325). Proposals to change workplace practices should be negotiated with the sector's workforce – not imposed by management as occurred under WorkChoices.

In addressing issues of flexibility, the Report, again without evidence, suggests, on page 310 that flexible working arrangements can benefit both employers and employees, stating that '(g)reater flexibility can improve the productivity of labour and reduce unit costs for employers.' We note that there is no explanation of what this flexibility might be and exactly how it increases productivity, but the notion of lowering unit labour costs simply supports our earlier contention that flexibility actually means lower wages – as we note the assertion is not lower wage costs, but lower unit wage costs. The Report then notes, again without evidence, that '(f)or employees it can provide greater choice about the way they organise their work and family responsibilities, improve working conditions and increase job satisfaction.' To this unsubstantiated assertion we add that such arrangements, intended as they are to allow the retailer to best roster people to service its customers, can also, in the experience of retail unions, lead to less choice about when an employee works, can put pressure on family responsibilities and generally decrease satisfaction.

Abolishing the three hour minimum shift requirement

For many workers, the compensation received for a shift of less than three hours is simply not worth the time, cost and inconvenience of having to go in to work for such a short period.

Unfair Dismissal Provisions

The Report notes the fear that unfair dismissal provisions constrain flexibility, and cite the OECD at page 322 as noting that '(c)are needs to be taken that the restoration of unfair dismissal protection at small and medium-sized enterprises does not impair labour market flexibility...' This view is endorsed by the PC. This view is the OECD's value judgment that essentially, flexibility is to be preferred to fairness. This is a view that was rejected by the Australian people in 2007.

Productivity improvements best gained by negotiation

While WorkChoices seriously eroded working conditions in favour of 'greater flexibility', the policy did not increase productivity. Therefore seeking to reduce working conditions is a reflexive and lazy response to the issues facing the retail industry.

Retail employers both large and small who are truly concerned about productivity should negotiate in good faith with the retail workforce through their union. Improving skill levels and staff retention will have a far more positive effect on productivity in the industry than the undermining of working conditions.

Recommendation

UnionsWA urges that the Commission's final report recognise that the future of the Australian retail industry cannot be secured by undermining the wages and conditions of retail employees. Cutting the take home pay of workers who are already among the lowest paid in Australia is not a path to productivity growth

that is sustainable. The cost of such an approach will be borne by the Australian taxpayer. The future of the retail industry will be secured by investing in the skills of its workers, and retaining those workers over the long term.

To discuss this submission further, please contact:

Simone McGurk
UnionsWA Secretary

Or

Tim Dymond
UnionsWA Research Officer