

The government is belatedly backing the penalty rates cut it always wanted

Written by The Conversation

It's impossible for the government to substantially ease the hardship for workers from the Fair Work Commission's decision to cut some penalty rates — as the [government's submission](#) into its implementation illustrates. Nor can it shirk responsibility for it.

The question on which the Commission had asked for submissions was, in effect, whether the decision should be rolled out in two, three or four tranches. Most observers assumed each tranche would be a year.

The Commission hinted that the awards with the biggest drop in penalty rates (such as retail, where there will be a 50 percentage point drop for permanent workers) should have a longer transition.

The government's submission on this threw the ball back into the Commission's court. It declined to offer any solution. One likely reason is that there is no solution. There is no way to offset the hardship caused by the decision to cut Sunday penalty rates in a range of retail and hospitality awards.

Still, the insistence by the Commission that the government make a submission was probably not a call for the government to tell them what it really thinks, but a call on the government to take some of the responsibility itself for what is happening.

The Commission probably thought at the time that it alone was going to carry the responsibility. But now it's the government who is wearing much of the blame.

No way to ease the blow of the cuts

The Commission, in calling for submissions, offered the explanation that a transition period might mitigate the hardship caused by its penalty rates decision.

The government is belatedly backing the penalty rates cut it always wanted

Written by The Conversation

But a cut is a cut, [whether it's phased in or not](#) . The likely increases in award rates over the next few years (in the order of 2-3% per year) could not offset the loss (of up to 25%) of wages for Sunday workers in nominal terms. They certainly could not do it in real terms (that is, after allowing for the effects of inflation) even over a longer period.

There was never any indication that the Commission was thinking about increasing base rates to offset the loss, and this is really what would be required to ease the blow. That said, there are also good reasons why it would not propose this anyway: it would either be too costly for employers, or of inadequate use to employees.

Caught on the issue

The other interesting thing about this, is that the government has been forced to make a submission on implementation. It had been conspicuous in its absence when parties were making a substantive submission to the case in the first place. In its original [decision](#) , the Commission had pointedly asked the Commonwealth to make a submission on implementation.

There is no particular reason why the government's views on phasing in are any more valuable than its views on whether there should be a cut in the first place. Indeed an argument can be made in the opposite direction.

Its overall responsibility for the economy would seem to give it a role in deciding whether there should be a cut in the first place. That's not so obvious when it comes to the question of how many tranches should be used to phase in the decision.

So the Commission could have been making a point of showing up the government for not having made a submission, as it should have made its views clear. But that seems unlikely.

The government's views were very clearly known by all. There had been numerous occasions on which [government](#) representatives, from the [Prime Minister](#) to [backbenchers](#) made clear their views on penalty rates. Since then, after some time, and under pressure from his backbench, the Prime Minister has [come out in support](#)

of the decision.

The independent appeal jurisdiction

Indeed, it's quite possible the Commission would have come up with a different decision if there was a different government in place, regardless of the fact that this government made no substantive submission. It's true that employers would have still been putting pressure on the Commission to make a cut anyway. But it was this government that [commissioned the Productivity Commission report](#) on which the Commission relied quite heavily when making the decision to cut penalty rates (and without allowing for cross-examination of its authors).

The Commission was well aware that the current government was hanging the threat of reorganisation over it. It was actively considering in [its 2013 election policy](#) creating a new "independent appeal jurisdiction" above the Commission. This would greatly reduce its power.

Although such a Bill would have had to get through the Senate, the behaviour of which is quite unpredictable, it would have been a major gamble by the Commission to go against the known will of the government and dare them to establish a new jurisdiction. The high-profile [announcement of the resignation](#) of Vice President Graeme Watson would have added ammunition to this fear.

The Commission is an institution. The principal concern of most institutions is with survival. If that is a priority, it is better to take a hit on one issue than to invite a permanent reduction of the institution's powers.

Although the Commission's decision was a very long one, in the end the evidence that the Commission acknowledged, claiming beneficial employment effects from the penalty rates cut, was not persuasive. The Commission would not estimate its magnitude.

As time goes by

As it is, things have moved on in the blame game. The government is carrying a lot of the blame anyway due to the tactics of the ALP and the unions. The argument that the penalty rate cut was just an independent decision of an independent arbitrator has worn thin.

The government is belatedly backing the penalty rates cut it always wanted

Written by The Conversation

There is no easy way for penalty rates to be cut for Sunday workers in retail and hospitality, without it directly becoming a cut in nominal wages, and real wages. To be precise, it cannot be done, as shown by the government's own submission on phasing-in.

Nor is there a way out for the government from this decision. It may not have made a submission earlier arguing for the cuts, but everyone knew what it wanted, and it created the conditions to ensure that was the decision the Commission came to. Now it is belatedly backing what it always wanted.

David Peetz receives funding from the Australian Research Council and, as a university employee, has undertaken research over many years with occasional financial support from governments from both sides of politics, in Australia and overseas, employers and unions. Research discussed in an earlier article for The Conversation was commissioned by the Shop, Distributive and Allied Employees Association and submitted to the Fair Work Commission during the review.

Read more <http://theconversation.com/the-government-is-belatedly-backing-the-penalty-rates-cut-it-always-wanted-75188>