This article is part of an election series on wages, industrial relations, Labor and the union movement ahead of the 2019 federal election. You can read other pieces in the series here , here and here .

Labor has promised to restore the penalty rates cut by the Fair Work Commission in its first 100 days.

From its point of view, as part of a broader attack on the Coalition's record on industrial relations, wage stagnation, widespread wage theft and the growth of insecure work, it makes sense.

But it betrays a broader principle Labor holds dear - independence of the tribunal.

The Coalition is saying little about it – still spooked by the electoral poison wrought by its Work Choices legislation more than a decade ago.

Throughout the campaign it's been happy to fall back on claims about economic growth and tax cuts creating favourable conditions to lift wages generally.

So what did the Fair Work Commission decide about penalty rates back in 2017, and what has occurred since?

The commission's decision was limited

The cuts to penalty rates are often discussed as if they applied across the board. They didn't. The commission's decision affected penalty rates in the federal awards applying to only six sectors: fast food, retail, hospitality, pharmacies, clubs and restaurants.

It determined that the penalty rates for working on public holidays in those awards would be reduced from July 1, 2017; and that the penalty rates for Sunday work in four of the awards would be phased down over four years. For example, full-time workers on the retail award had their Sunday rates cut from 200% of the normal rate to 195% in July 2017, then to 180% in July 2018, and were to have the cut to 165% in July this year, followed by a cut to 150% in July 2020.

Read more: ***Myths about penalty rates and those who rely on them***

Extra payments for working irregular or unsocial hours are a longstanding feature of Australia's industrial relations system. Traditionally, penalty rates have been included in awards with two objectives in mind: to compensate workers for having to work overtime or on weekends and public holidays, and to deter employers from requiring employees to work at these times.

However, in reaching its decision, the commission found that the deterrence objective was no longer relevant for public holiday or Sunday penalty rates.

Sundays have become less sacred

The finding followed a report of the the Productivity Commission that found that working on Sundays was far more common than it had been in industries such as hospitality, restaurants and retail. This reflected a broader shift to a "24/7 economy".

In the Fair Work Commission's word, the "disutility" endured by workers employed on Sundays was less than it was.

Labor and the union movement have strongly criticised the commission's decision in the two years since it was handed down. Labor very quickly introduced a bill to override it and restore the penalty rates of the 700,000 affected workers. The government opposed it and a similar bill introduced by The Greens, enabling Labor and the unions to hammer the prime minister in the election campaign for " voting eight times " to cut penalty rates.

Labor has argued that over the recent ten-day Easter and Anzac Day break, the penalty rate cuts resulted in a loss of between $218 for a fast food worker and $369 for a pharmacy employee .

The union/Labor-aligned McKell Institute says workers will be $2.87 billion worse off by the end of the scheduled reduction in penalty rate cuts if the Coalition is re-elected .

But cutting penalty rates has created few jobs

Business groups have long claimed that cutting penalty rates will boost employment levels, a position endorsed by both the Productivity Commission and Fair Work Commission. However, research published by the Australia Institute last year finds that the retail and hospitality industries were among the lowest industries for job growth in the year after rates were cut .

The Council of Small Business Organisations conceded two weeks ago that the cuts failed to create one new job
. Its chief executive, Peter Strong, said the impact had been minimal because it had coincided with above average increases in the minimum wage.

"There's no extra jobs on a Sunday," he was reported as saying. "There's been no extra hours. Certainly, I don't know anyone (who gave workers extra hours). It's been just a waste of time."

However, the Fair Work Commission is set up to be independent.

Labor's approach carries longer term risks

A campaign spokesperson for the Liberal Party was quoted in the New Daily last month saying:

"'Bill Shorten knows it is the independent Fair Work Commission that sets penalty rates, not the government. In fact, it was Bill Shorten … who set up the review into penalty rates. He even appointed the umpire.'"

The Coalition is gilding the lily. It has been no great defender of the industrial tribunal's independence in the past. Under WorkChoices it sidelined the commission completely. Lately it has stacked the commission with employer representatives.

Read more: ***Bill Shorten's promise of a living wage is both realistic and necessary. But it's not enough***

But it's not a great idea to start overruling Fair Work Commission decisions that are unpopular. Yes, the penalty rate cuts are arbitrary, reducing the take-home pay of low-paid workers. But Australians have trusted the tribunal to make those judgment calls for more than 100 years.

If Labor wants to influence Fair Work Commission decisions, it should change the criteria used by the commission to review awards – it plans to do so as part of its promise to turn the minimum wage into a "living wage".

Overturning decisions it doesn't like will leave the Fair Work Commission wondering why it is bothering, and allow others to refuse to accept decisions they don't like. And if Labor is elected and perseveres, it will also allow a less worker-friendly successor to overturn decisions it doesn't like.

Read more: ***How the major parties stack up on industrial relations policy***

Anthony Forsyth has received research funding from organisations including the BCA, CFMEU, Fair Work Commission and Victorian Government. He is a Consultant with Corrs Chambers Westgarth. The views expressed in this article are his own. Anthony blogs on workplace issues at: https://labourlawdownunder.com.au/

Authors: Anthony Forsyth, Professor of Workplace Law, RMIT University

Read more http://theconversation.com/labor-wants-to-restore-penalty-rates-within-100-days-but-what-about-the-independent-umpire-116154