

08 August 2025

Committee Secretary
Senate Education and Employment Committees
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Parliament House
Canberra ACT 2600

Via email: eec.sen@aph.gov.au



Chamber of Commerce
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Dear Committee Secretary

Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 Inquiry

The Chamber of Commerce and Industry of Western Australia (CCIWA) is the peak body advancing trade and commerce in Western Australia. We represent more than 7,000 members, spanning every sector of the economy, employee size, and region within WA.

We are fundamentally committed to using our insights to develop and advocate for public policies that will help realise our vision to make Western Australia (WA) the best place to live and do business.

From the outset, CCIWA rejects the premise of this Bill.

Since 1904, the Commonwealth, in some form, has had an independent arbitration and conciliation body to make determinations related to the terms and conditions of employment in Australian workplaces. The Fair Work Commission (FWC) – the most recent iteration of this body - has held this power with respect to awards since the introduction of the *Fair Work Act 2009* (Cth) (FW Act). This Bill represents a significant departure from this modern framework, creating a situation where our system of awards has limited relevance to society and workplaces in Australia.

In addition, by restricting the use of variations, which are necessary to reflect the changing nature of our work practices, including changes in societal expectations over working hours, our ability to ensure productive and flexible workplaces is also placed in jeopardy.

We are also concerned that the small and medium businesses, particularly in the retail and accommodation/hospitality sectors will be most harmed by this Bill.¹

Below, we make specific comments in relation to the Bill, and why we regard it as fundamentally flawed and should not be passed in its current form.

¹ 2025 Annual Wage Review [2025] FWCFB 3500 at [127]

This Bill is out of touch and lacks real world relevance

The intention of creating modern awards, as articulated through section 134 of the *FW Act* has been to provide a safety net of terms that are flexible, simple and modern for both employers and employees.²

As part of that process, the FWC must have significant regard to any reduction in terms and conditions within Modern Awards and its impact on employees in any award variation. As part of this, we have seen the rationalisation and simplification of awards to better reflect current work practices. Temporarily increasing part time hours in the Retail Award to support modern and flexible workplaces is a case in point.³ Various changes of this nature have been made to awards to reflect the needs of the community.

Penalty rates and overtime rates have been considered by the FWC and predecessor bodies since the 1980s as compensation for the disutility of working weekends, public holidays and outside “ordinary” hours.⁴ However, the changes proposed for section 135A of the *FW Act* will result in an assessment that effectively neutralises the FWC from having any ability to make decisions that accurately reflect the needs of the community.

Under this proposal, any variation to Modern Awards that could be beneficial to the majority of employees and employers may be prohibited, if it results in the reduction in remuneration to a single award covered employee. This is a significant departure from the variation of Awards and will, in effect, create static awards that are out of touch with relevant and productive business practices.

Ironically, this section would also mean that the award simplification process initiated by former Minister for Industrial Relations, Julia Gillard, which saw numerous amendments and Awards restructured, for the benefit of a significant number of employees and employers, but not *all* employees, could not happen. This is because a single Award covered employee may have gone backwards.⁵ These changes however were critically important as they made it easier for many employers and employees to understand their obligations and their entitlements, respectively.

What these proposed changes do is to create a system that is out of touch with relevant and productive business practices. This is antithetical to the intent of Modern Awards and a productive and modern industrial relations system.

The Bill puts exemption clauses at risk

Proposed s135A(b) in the Bill could see the removal of current exemption rates that are present within the Modern Awards framework.⁶ These exemption clauses, such as

² Hon. Julia Gillard , ‘[Gillard issues updated award modernization request](#)’ (Media Release 16 June 2008).

³ Such as *Award flexibility—General Retail Industry Award 2020* (AM 2021/7) [2021], FWCFB 3571

⁴ *4 yearly review of modern awards – Penalty Rates* [2017], FWCFB 1001 at [39]

⁵ Such examples are shown here in Department of Education, Employment and Workplace Relations (Cth), Submission no 418 to Senate Standing Committee on Education, Employment and Workplace Relations, *Inquiry Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012* (31 October 2020) 18-20

⁶ Examples being of some awards with exemption rates present being the *Sugar Industry Award*, *Hospitality General Award*

annualised wage arrangements, have existed Pre-Modern Awards and emerged during the process of modernising the Awards.⁷

For employees, these provisions help ensure they are remunerated more than the Award minimum, usually through the expression of a graded percentage scale. For employers, these provisions make Modern Awards more flexible, easier to comply with and meet the work practices that are prevalent in their industry.⁸

While the Government's amendments in the House do bring some comfort that the FWC will not be forced to go through a costly process of reviewing all Awards to ensure such provisions do not exist, they do not protect currently operating exemption clauses from being stripped away. An example of this would be the annualised wage arrangements for hospitality managers in the *Hospitality General Award*.⁹

Under these proposed changes, if a variation was to be brought forward for awards involving current exemption clauses, the FWC would be required to remove those exemption clauses for tens of thousands of employees who have agreed and are content with their arrangements, if it is found one person covered by that award was disadvantaged by the exemption clause.

This is a key example, where other provisions of the Act may be better suited to addressing the actions of an individual employer.

Concluding remarks

This Bill is another example of an IR agenda that is entirely out of touch with the needs of modern workplaces. It is also entirely inconsistent with recent commentary from the Federal Government that productivity is the number one priority to ensure businesses grow, prosper and create jobs across Australia.

Should you wish to discuss the content of this letter further, please do not hesitate to contact Anthea Wesley, Manager Policy, via email .

Yours sincerely

Aaron Morey
Acting CEO

⁷ Fair Work Commission, [Background document on exemption rates, submission in AM2020/103 Award variation](#), 10 December 2020

⁸ Example being clause 25.1 of *Hospitality General Award*

⁹ clause 25.1 of *Hospitality General Award*