

20 August 2025

Senate Standing Committees on Education and Employment

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

Response to Questions on Notice from Senator Kovacic received on 18 August 2025.

The Prime Minister and the Treasurer have identified productivity as a key priority for this term of government. In your view, what impact will this Bill have on productivity, and in particular on the ability of small businesses to focus on their core operations rather than diverting resources to administrative and regulatory compliance?

In the BCA's view, this Bill prevents the implementation of productive working arrangements. It does this by limiting the FWC from assessing and implementing sensible salary arrangements or other potential substitutes for overtime and penalty rates in modern awards, even when they benefit a large number of workers. This is because salaried exemption rates allow employers to absorb some penalty rates and overtime into a higher base rate of pay, resulting in less time spent on rostering and more flexibility for employees to work as they prefer. Absorption rates may also reduce burdensome wage record-keeping requirements, again removing a time-consuming regulatory burden from both employers and time-sheet obligations for employees, freeing up time for employees and managers to focus on more productive work.

What would be the likely impact on small and medium-sized businesses, and their employees, if additional record-keeping obligations were introduced in relation to exemption or substitution rate arrangements? Have you quantified this in terms of potential financial loss, or the additional business hours that would be required for regulatory compliance?

We refer to our answer above. Record keeping requirements are already burdensome for employers, covering each hour worked, breaks taken, and whether each hour attracts a loading, penalty rate, allowance or other separately identifiable amount. This is even more difficult as an increasing number of employees work from home, where the ability for employers to monitor working hours and breaks is difficult and increased surveillance is often resisted by employees and unions. The Bill would benefit from a comprehensive policy development or assessment process that follows best practice principles to help identify the costs and benefits.

To what extent can individual flexibility arrangements serve as an alternative to exemption rate clauses? What has been the experience of businesses in using individual flexibility arrangements, and what feedback can you provide on their practical application in the workplace?

Individual flexibility arrangements are not a viable alternative to exemption rate clauses. This is because they can be terminated by either the employee or employer on 13 weeks' notice, and therefore don't provide ongoing stability or certainty for either party. The 2024 *General Manager's report into individual flexibility arrangements under section 653 of the Fair Work Act 2009* published by the Fair Work Commission, found that IFAs are not widely used, including due to the concern by employers that they can be unilaterally terminated by employees, leading to uncertainty ([General Manager's report into individual flexibility arrangements under section 653 of the Fair Work Act 2009 for 2021 to 2024](#))