

## **SUBMISSION**

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

8 August 2025

## Submission by the United Firefighters Union (UFU), the Plumbing and Pipe Trades Employees Union (PPTEU) and Maritime Union of Australia (MUA)

1. The UFU, PPTEU and MUA welcomes the opportunity to make a submission to this important bill and the Albanese government's critical endeavours to close loopholes in the Fair Work Act 2009.
2. We support swift passage of this bill, and urge the government to take the opportunity to also ensure other perceived loopholes in the Act are quickly closed to give effect to the intent of the bill.
3. As the Minister said in her second reading speech, the intent of the bill is simple: "You deserve laws that ensure your pay will not go backwards."
4. It was this intent that led the government not just to introduce this bill, but also to introduce previous amendments to provisions of the Fair Work Act regarding protracted bargaining. The Albanese government passed the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*, Part 5A of which enshrined the important principle that when the newly introduced intractable bargaining workplace determinations were made by the Commission, they could be no less favourable to employees and their representatives than conditions currently enjoyed. Workers could not go backwards. This uncontroversial but important principle needed to be stated in the legislation because employers were seeking to use the Albanese government's new provisions to remove conditions and take workers backwards.
5. As Minister Burke at the time said when speaking in support of the amendments:

*... what this effectively does is bring back a concept that was there before we introduced the arbitration principles. It used to be that the old agreement would just remain in place. This allows that, as a result of the secure jobs, better pay laws, we don't end up in a worse situation than that.*

*I am aware of reports of certain employer consultants—one of whom, who has had a long history with the other side of politics—who have been providing advice to businesses on how they might be able to game the laws we put in last year to actually find ways of workers going backwards during the course of arbitration. We introduced the legislation and supported the legislation last year, secure jobs, better pay, because we wanted to get wages moving, not because we wanted to find an opportunity for certain employers—and this is certainly not*

*most employers—to game the system and find ways to get conditions to go backwards. These amendments fix that...*

6. Unfortunately, notwithstanding the passage of these amendments and the very clear intention behind them, some employers have continued to ‘game the system’ and argue that the intractable bargaining workplace determination provisions allow them to seek that the Commission take workers and their organisations backwards by making determinations that are less favourable than the conditions in the existing enterprise agreement.
7. Firefighters currently face employers who wish to remove long-standing agreed provisions that give them, for example, the right to agree on the uniform that they wear into dangerous fire situations. We are also aware of agents in the university sector also advising that the new provisions allow for the undermining of long held protections if employers simply ‘game the system’, in the words of Minister Burke.
8. These employers would not have had any ability to do this prior to the introduction of the intractable bargaining workplace determination provisions, and the amendments referred to above were clearly designed to close that unintended loophole, yet to this date some law firms and their clients are still seeking to unscrupulously exploit what they consider to be gaps in the Act.
9. Workers and their unions should not have to go to the expense of legal proceedings to establish what was clearly the intention of the Albanese government and the parliament last year, or worse take the risk that their conditions may actually go backwards. Just as the government is acting swiftly to ensure that workers cannot go backwards with unscrupulous employers seeking to remove penalty rates, the government should also act swiftly to put beyond doubt the very clear intention of the amendments from last year and ensure that workers and their representatives cannot go backwards under the new bargaining determination provisions introduced by the Albanese government.
10. Closing this loophole and clarifying the very clear intent of the government is urgent. As things stand at the moment, in a variety of industries employer law firms and consultants are advising clients to simply hold out and not bargain properly, drag out the process and hope that they can go before the Fair Work Commission for an intractable bargaining workplace determination which will remove some of the conditions in existing enterprise agreements. And this is not just costing workers and their representatives significant amounts of money, it is tilting the playing field against them and undermining fair bargaining.
11. A simple amendment to the relevant provisions of the Act would put beyond doubt that the “no less favourable” provisions inserted last year apply to all conditions in

existing enterprise agreements, not just some as some employers are currently arguing.

12. We are not asking for new rights. As Minister Burke noted last year, this is simply about enshrining the pre-existing position that existing enterprise agreements remain in force until a new one is negotiated. No worker or union will go ‘forward’ as a result of these amendments we seek, but it will guarantee that no worker or their representative will go backwards.
13. The bill currently before the parliament is the appropriate place to make such a clarification of the government's original intention, given that the bill is about enshrining the principle that the government’s laws do not permit workers to be taken backwards by the actions of the Fair Work Commission or employers. Any delay in implementing such an amendment will have an impact on workers across the country and will result in workers going backwards, which was clearly never intended by the government
14. Accordingly, we urge the government to support amendments to this Bill to clarify the true intention of *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* and to guarantee that this Bill delivers on the government’s stated intention that every worker deserves laws that ensure they will not go backwards.