



MASTER BUILDERS
A U S T R A L I A

8 August 2025

Senate Education and Employment Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Attention: Committee Secretary

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

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

On 31 July 2025, the Senate referred the provisions of the *Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025* (the 'Bill') to the Senate Education and Employment Committee for inquiry and report by 21 August 2025.

Master Builders Australia (Master Builders) takes this opportunity to respond to this inquiry.

Who we are

Master Builders is the nation's peak building and construction industry association, which was federated on a national basis in 1890. Master Builders' members are the Master Builder State and Territory Associations. Over 130 years, the Master Builders network has grown to more than 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association representing all three sectors: residential, commercial, and civil construction.

The Master Builders network also delivers vocational education and training through its network of registered and group training organisations across Australia. This includes trade qualifications in building and carpentry as well as ongoing professional development training.

Membership with Master Builders is a stamp of quality, demonstrating that a builder values high standards of skill, integrity, and responsibility to their clients.

Master Builders' vision is for a profitable and sustainable building and construction industry.

General Comments

Master Builders understands that the purpose of the Bill is to:

'Ensure that penalty and overtime rates are protected and remain an enduring part of the modern awards safety net'.



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Specifically, the Bill proposes to amend the Fair Work Act (the 'Act') to:

- ensure the specified penalty or overtime rates in modern awards cannot be reduced, and
- close loopholes in the modern award safety net that allow employers to 'roll up' penalty and overtime rates into a single rate of pay, that do not fairly compensate award-reliant employees for the penalty rates and overtime they would have otherwise received.

Master Builders would observe that this Bill represents a second amendment to the Act in relation to penalty rates and overtime rates.

The Committee will recall that the *Fair Work Amendment Bill 2013* (2013 Bill) amended section 134 of the Act so that the Fair Work Commission (the 'Commission'), when exercising its powers under Part 2-3 of the Act, was required to take into account the need to provide additional remuneration for:

- Employees working overtime;
- Employees working unsocial, irregular or unpredictable hours;
- Employees working on weekends or public holidays; or
- Employees working shift work.

The Explanatory Memorandum explained that these additional requirements would:

'...promote the right to fair wages and in particular recognise the need to fairly compensate employees who work long, irregular, unsocial hours that could reasonably be expected to impact on their work/life balance and enjoyment of life outside work'.

Apposite are comments made at that time by the now Minister for Employment and Workplace Relations:

*'It is necessary to enshrine penalty rates, overtime, shift work loading and public holiday pay, and these should be considered by the Fair Work Commission when it sets award rates and conditions.'*¹

Given this commentary and the existing requirements to consider the impact of changes to modern awards with respect to penalty rates and overtime provisions it is hard to see how this Bill is necessary given the intent of the provisions inserted by the 2013 Bill.

Further, and to echo sentiments expressed during consideration of the 2013 Bill, penalty rates and overtime provisions are squarely matters within the remit of modern awards and should not be interfered with by Parliament.

Finally, when considering the broader context within which this Bill is being progressed, including Commission proceedings that would be directly impacted should this Bill pass and, the strong productivity reform agenda being progressed by the Government, the Bill would seem inappropriate at this time.

On this basis Master Builders does not support the Bill.

Notwithstanding this Master Builders notes:

- The clarity provided by the addition of subsection (3) which confirms that nothing in the Bill requires the Commission to undertake a review of all modern awards or initiate a review of any

¹ House of Representatives, Hansard pg 5042, 4 June 2013.

award term outside the scope of an application before it or to exercise its powers under Part 2-3 of the Act.

- That it would appear that the Bill would not affect the ability to conduct negotiations with respect to penalty rates and overtime provisions under Enterprise Bargaining Agreements or Individual Flexibility Agreements.

Practical implications

Master Builders does have some concerns with several potential practical implications should the Bill pass. Some examples are set out below.

Impact of the Bill on a consent position

How is the Commission to deal with a consent position regarding a variation to penalty rates or overtime provisions under a modern award? Would the Bill prevent the Commission varying an award to reflect that agreement if it includes a reduction in these rates notwithstanding a likely trade-off?

Impact of the Bill on existing provisions

There is nothing in the Bill that confines consideration of these matters to variations (for example) to provisions within modern awards that deal squarely with penalty or overtime rates. As such, the breath of application of the Bill is uncertain and unclear.

For example, currently provisions regarding Time Off in Lieu of overtime (TOIL) operate on an 'hour for hour' basis i.e. despite an overtime rate of 150% applying (for example) if this time is accrued the employee is entitled to one hour off time in lieu (not an hour and a half).

If a variation application is made in respect of this provision how could the Commission consider the application of the Bill in light of these current arrangements?

Another example arises when considering the shift work provision which features in a number of modern awards including the *Building and Construction General Onsite Award 2020*. These provisions are notoriously complex and often trigger both a penalty rate and an overtime rate.

It is unclear, for example, how the Bill might apply to a proposed change to the definition of 'shiftwork' that might alter an employee's eligibility to receive relevant penalties. Master Builders is of the view that it would be inappropriate if the operation of the Bill was to prohibit variations that would alter eligibility requirements to receive relevant penalties.

The 'test' to be applied

Another practical concern is that the 'test' under proposed section 135A(1)(b) appears to implement an assessment on an individual basis. This is reflected in the example set out in the Explanatory Memorandum.

This approach is at odds with the latest amendments to implement a requirement for a 'global assessment' of the BOOT for the purposes of an Enterprise Agreement (see section 193A of the Act).

While admittedly this is within a different context from the Bill, there is a threshold question regarding how these assessments should be carried out.

