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21 August 2025

Mr Gerry McNally
Committee Secretary
Senate Standing Committees on Education and Employment
Committee Office | Department of the Senate
Parliament House
Canberra ACT 2600

Dear Sir,

Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 - Questions on Notice

Thank you for your questions on notice and on behalf of our small business members, COSBOA is pleased to provide our responses below:

- 1. 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?**

This represents the 35th major change to the Fair Work Act since 2022, all of which have affected small businesses disproportionately relative to their compliance capacity.

Small businesses operate differently from large corporations. Without specialist HR teams, small business owners personally manage compliance with Australia's complex industrial relations system, including over 121 different modern awards with varying penalty rate calculations and conditions.

Small Business rely on Modern Awards as the take up of Enterprise Agreements by Small Business is less than 5%. This is because small businesses simply do not possess the capacity to invest time, effort and cost to negotiate terms and conditions beyond the Award requirements.

Therefore, changes to legislation that "lock in" arrangement to remove the ability of the Fair Work Commission to determine applications from parties on behalf of small business for more flexible arrangements such as annualised salaries and "rolled up rates" will require small operators to continue the complex calculations of penalty rates for individual shifts and employees under changing circumstances, making ongoing wage compliance difficult.

It removes the option that is currently available and COSBOA sees this removal of independent assessment by the FWC as impeding productivity especially where small businesses are required to provide goods and services over a wide span of hours. Amending current arrangements and

removing the ability for reform adds to an administrative requirement that will necessitate time and resource allocation away from customer service, business development, and operational efficiency.

Given that small businesses represent 97% of Australian businesses and employ over 5.2 million Australians, this productivity impact has broader economic implications that may conflict with the Government's stated productivity priorities.

2. 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?

Small businesses spend more than 15 hours per week on average on regulatory compliance activities (1). Avenues that reduce record-keeping requirements for exemption or substitution rate arrangements exacerbate the substantial administrative obligations for small and medium-sized businesses.

These operational requirements include:

- Detailed tracking of penalty calculations for irregular hours across multiple award classifications
- Comprehensive documentation for working arrangements and exemptions
- Investment in more sophisticated payroll systems and software updates and upgrades
- Increased time allocation for compliance documentation

These obligations disproportionately affect small businesses that lack dedicated compliance resources. While large corporations can distribute such costs across specialist teams, small business owners must personally manage compliance requirements while maintaining daily operations

The cumulative effect of regulatory changes since 2022 compounds this burden. We recommend the committee consider commissioning an independent regulatory impact assessment to quantify these costs and their effect on small business viability and employment capacity.

3. 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?

The Bill's preservation of the Individual Flexibility Arrangements (IFAs) and ability to provide for individual rolling up of penalty rates into an annualised salary arrangement is positive. However, IFA's are an onerous and complex process as it must be done on an individual basis, instead of a

wider mechanism applying across an industry sector. IFA's cannot fully substitute for broader award flexibility mechanisms.

IFAs have structural limitations:

- They require individual negotiation and documentation for each employee
- They create administrative overhead for businesses managing multiple arrangements
- They are less suitable for businesses requiring consistent operational arrangements
- They depend on underlying award flexibility parameters

Small businesses rely primarily on Modern Awards because potential costs and time involved with investing in bargaining outweigh the benefits primarily due to resource constraints and complexity. The Fair Work Commission's approval processes for enterprise agreements are technical and can be lengthy, making them impractical for many small operators.

IFAs work effectively for specific individual circumstances but cannot replace the systematic flexibility that comes from the Fair Work Commission's ability to adapt awards to changing economic conditions and sector requirements.

4. The Government has stated that any changes to the way penalty and overtime rates apply should be pursued through enterprise bargaining. What are the views of small businesses regarding the use of enterprise bargaining as the mechanism to achieve such changes?

The Government's position that penalty rate changes should be pursued through enterprise bargaining does not align with small business operational realities.

Enterprise bargaining presents several challenges for small businesses:

- **Resource Requirements:** Complex bargaining processes require specialist expertise that small businesses typically cannot access
- **Cost Considerations:** Legal and specialist support costs are often prohibitive for small operators
- **Scale Mismatch:** Bargaining processes designed for large employers are not suited to businesses with small workforces

Small businesses rely on Modern Awards because they cannot practically access sophisticated bargaining mechanisms. Directing small businesses toward enterprise bargaining while reducing award flexibility creates a situation where existing operational arrangements become unavailable without providing viable alternatives.

The Bill should be considered within the context of cumulative regulatory change. Small businesses have adapted to 34 major industrial relations changes since 2022, with each change requiring operational adjustments and compliance adaptations. This proposed legislation,

together with further plans for changes to non-compete provisions will likely see 37 major changes within 3 years.

COSBOA has strong view that the independence of the Fair Work Commission should be respected. The proposed Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 impedes the Commission's role by limiting its discretion to make evidence-based award variations. This constrains the Commission's capacity to respond to changing economic circumstances or sector-specific requirements through its traditional independent assessment processes.

COSBOA recommends:

- Rejecting the Bill in its current form
- Retaining the Fair Work Commission's capacity for independent, evidence-based award assessments
- Considering explicit provisions for small businesses or phased implementation approaches or explicitly exclusion of Modern Awards that predominately cover small businesses like hospitality, cafes and restaurants, hairdressing and beauty, fitness, landscaping, dry cleaning and laundry, pharmacy, gardening and landscaping sectors to name but a few.
- Deferring the legislation pending a proper consultation with small business stakeholders to understand the detailed implications.

In conclusion, COSBOA advocates for a policy approach that balances worker protections with operational flexibility essential for small business viability. This would better serve Australia's economic interests while maintaining employment opportunities across the small business sector that comprises the majority of Australian enterprises.

Your sincerely

Matthew Addison

Chair – Council of Small Business Organisations of Australia

Reference

1. [Compliance Costs of Regulation for Small Business](#)