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

UnionsWA is the governing peak body of the trade union movement in Western Australia. As a peak body we strengthen WA unions through co-operation and co-ordination on campaigning and common industrial matters. UnionsWA represents around thirty affiliate unions, who in turn represent approximately 140,000 Western Australian workers.

UnionsWA welcomes the opportunity to provide a submission to the Senate Standing Committees on Education and Employment on the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025. UnionsWA strongly endorses the submission made by the Australian Council of Trade Unions.

UnionsWA supports the establishment of a principle requiring the Fair Work Commission to ensure that penalty and overtime rates are not reduced and that modern awards do not include terms that substitute employees' entitlements to receive penalty or overtime rates where those terms would have the effect of reducing that additional remuneration employees would otherwise receive.

For many people, evenings and weekends are a time of rest or recreation. It is the time that events are held, social occasions are organised, or team sports take place. For those workers who instead are working at these times, not only forgoing those opportunities but also for providing the labour that is essential for everyone else to engage in the activities at those times that they enjoy, it is appropriate and necessary that they are adequately compensated for it.

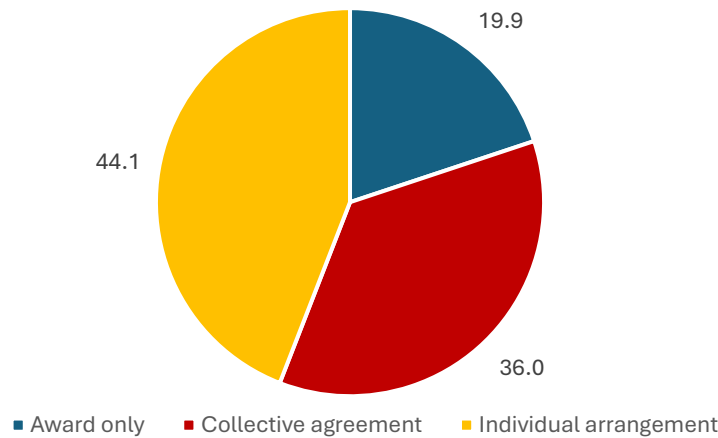
Importantly too, penalty rates bolster the take-home income of some of the lowest paid workers in Australia. As such, these penalty rates support their household spending, in turn driving increased retail trade and business activity, often in the very industries in which they are employed.

Penalty rates are critical to ensuring workers are compensated for working overtime or at unsociable hours, such as weekends, late nights or public holidays. It is essential, therefore, that they are protected in our modern awards to provide that safety net for those workers who are less likely or unable to negotiate industrial agreements.

Protecting penalty rates in modern awards is crucial too due to high degree of award reliance amongst women, young people and the low-paid. As such, a reduction in award entitlements would have a disproportionate impact on these cohorts of workers.

For the context within our state, the ABS *Employee Earnings and Hours* demonstrates award-only workers comprised almost 20 per cent of employees by method of setting pay in Western Australia.

Share of WA employees (%) by method of setting pay



Source: ABS, *Employee Earnings and Hours, Australia*

That dataset also showed that of non-managerial employees in Western Australia, those who were only paid under an award were earning on average just 66.59 per cent of the average of all methods of setting pay and 61.87 per cent of those employed under a collective agreement.

**Average hourly total cash earnings of non-managerial employees
by method of setting pay – Western Australia¹**



Source: ABS, *Employee Earnings and Hours, Australia*

In its submission to the 2024 Annual Wage Review, the WA Government noted that ‘over 39 per cent of all Western Australian employees work in the six most award-reliant industries, and there is a particularly high level of award reliance in three of Australia’s largest employing

¹ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia* (January 2024).

industries, Health Care and Social Assistance; Retail Trade; and Accommodation and Food Services'.²

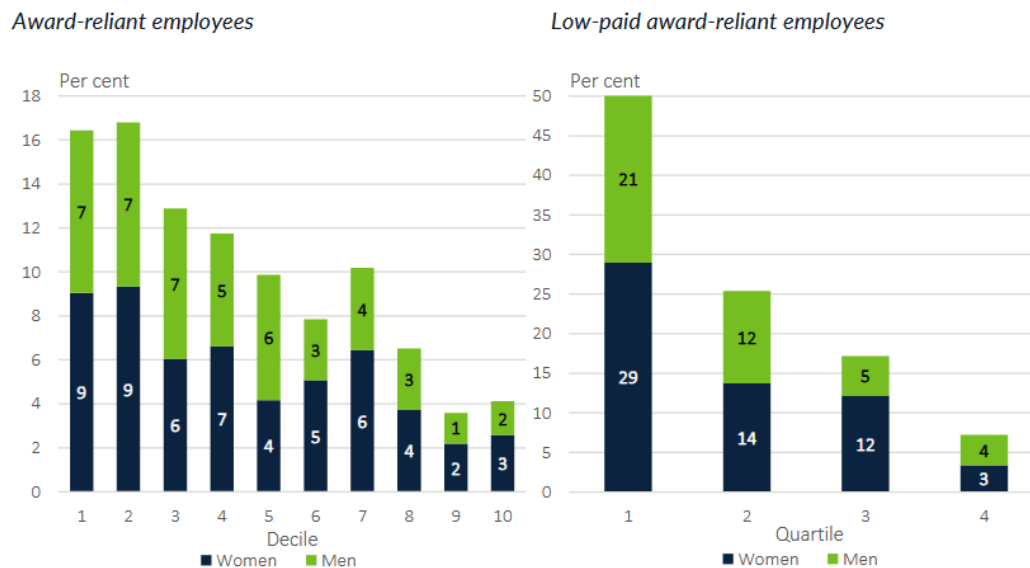
Nationally, women comprise 58.6 per cent of modern award-reliant employees and men comprise 41.4 per cent.³ Women making up a great proportion of award-reliant workers is the case regardless of which age group is considered, with more than 60 per cent of modern award-reliant workers aged from 35 to 64, women.⁴

Women and men modern award-reliant employees, by age group

Age group (years)	Share of age group			Share of gender		Share of age group and gender	
	Women	Men	Total	Women	Men	Women	Men
	(%)	(%)	(%)	(%)	(%)	(%)	(%)
14–20	56.1	43.9	100	20.5	22.7	58.5	53.5
21–24	53.0	47.0	100	14.4	18.1	38.4	37.2
25–34	58.0	42.0	100	22.6	23.1	23.4	18.0
35–44	63.0	37.0	100	15.0	12.4	15.8	9.4
45–54	65.0	35.0	100	13.6	10.3	16.2	9.6
55–64	61.6	38.4	100	10.7	9.5	18.2	11.7
65+	53.6	46.4	100	3.2	3.9	19.8	15.5
Total	58.6	41.4	100	100	100	23.6	17.7

Source: ABS, Microdata: Employee Earnings and Hours, Australia, May 2023.

The majority of both women and men award-reliant employees are in the bottom half of the household income distribution. A higher proportion of women, however, are considered low-paid award reliant employees relative to all award-reliant employees.⁵



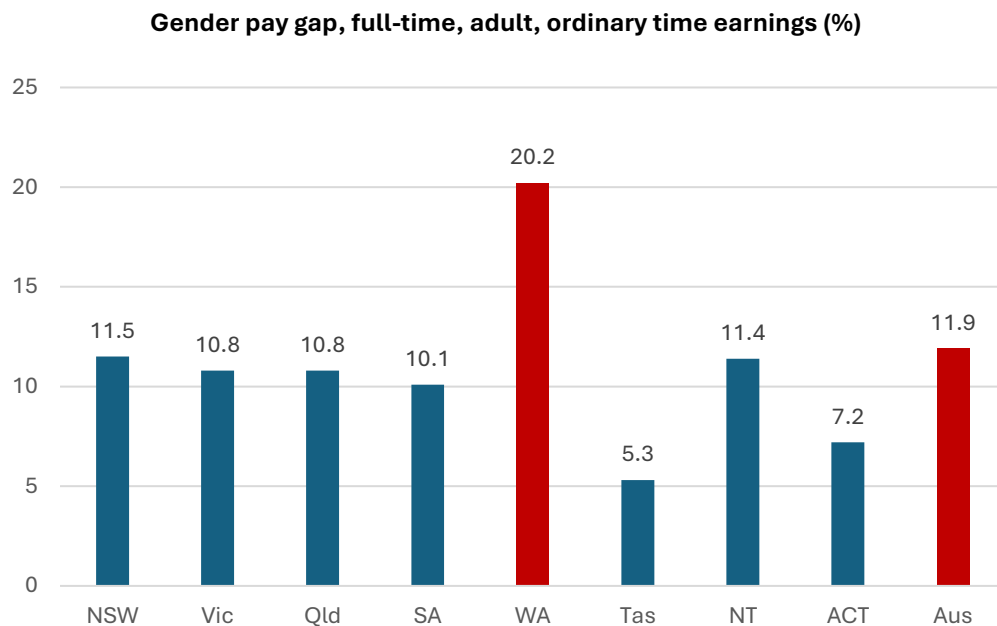
² Government of Western Australia, Submission to the Fair Work Commission, *2023-24 Annual Wage Review* (28 March 2024).

³ Justin Strong, David Rozenbes and Josh Tomlinson, *A profile of employee characteristics across modern awards – 2023* (Fair Work Commission Research Report, February 2025).

⁴ Fair Work Commission, *Statistical Report – Annual Wage Review 2024-25* (Report, 24 April 2025).

⁵ Jamie van Netten and Josh Lipp, *Award-reliant employees in the household income distribution of employees: an update* (Fair Work Commission Research Report, February 2025).

This is of particular relevance in Western Australia, where the gender pay continues to be substantially higher than every other state and territory. ABS data reveals that as of November 2023, the gender pay gap in WA sits at 20.2 per cent.⁶



Source: ABS *Average Weekly Earnings*

Examining Retail Trade and Accommodation and Food Services as two key industries associated with working unsociable hours, it can be seen that as of May 2025, 56 per cent of retail trade workers in WA were women and 57 per cent of those in accommodation and food services. Examining just those working part-time hours, this increases to 66 per cent for retail trade and 65 per cent for accommodation and food services.⁷ This demonstrates the overrepresentation of women in these industries and thus the disproportionate gendered impact removing penalty rates would have.

The awards system provides a critical safety net for workers, with this legislation establishing essential safeguards against the reduction of penalty and overtime rates in that safety net. This safety net also underpins many agreements and individual contracts, both through providing that minimum standard but also through direct references to the awards. As a result, it is essential that this safety net is robust.

Where employers wish to seek flexibility in employment terms and conditions, the appropriate avenue is through the negotiation of an enterprise agreement. Through the better off overall test by the Fair Work Commission and by negotiating outcomes with unions, that process ensures that any flexibility sought does not inadvertently disadvantage workers.

UnionsWA reiterates its support for the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 and the establishment of a principle requiring the Fair Work Commission to ensure that penalty and overtime rates are not reduced and that modern awards do not include

⁶ Australian Bureau of Statistics, *Average Weekly Earnings, Australia* (February 2025).

⁷ Australian Bureau of Statistics, *Labour Force, Australia, Detailed* (July 2025).

terms that substitute employees' entitlements to receive penalty or overtime rates where those terms would have the effect of reducing that additional remuneration employees would otherwise receive.

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If you wish to discuss this submission further, please contact me at

Yours sincerely,

Rikki Hendon
Secretary