Submission

Senate Education and Employment Legislation Committee Inquiry: Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025

Professor Chris F. Wright

University of Sydney Business School,
The University of Sydney

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I am Professor of Work and Labour Market Policy at the University of Sydney Business School. My research examines the institutional drivers of and barriers to the attainment of decent work, particularly in low-wage sectors, in Australia and internationally. I am the author of over 100 academic journal articles and book chapters, editor of 10 volumes including *International and Comparative Employment Relations* (2021), and co-author of *Work and Industrial Relations Policy in Australia* (2025). I have written research reports for the International Labour Organization, the UK, Dutch, Australian and New South Wales governments, the Lowy Institute, and various trade union and employer organisations. I received my PhD from the University of Cambridge in 2011.

I welcome the opportunity to present this submission[1] to the Senate Education and Employment Legislation Committee Inquiry into the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025.

Penalty rates are higher rates of pay to compensate for working overtime or at unsociable hours, such as weekends, late nights or public holidays. Australia is not unique in having penalty rates or premium rates of pay for overtime or work outside of standard work hours or at unsociable hours. Other countries, especially in Europe, have similar arrangements, though they are less common in the United States and the United Kingdom.[2]

The Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 that this Senate committee inquiry is examining would enshrine a new "high-level principle" into the Fair Work Act that would override cases currently before the Fair Work Commission where industry is pushing for greater flexibility in awards on penalty rates and overtime. If passed, the bill would stop the Fair Work Commission from allowing penalty or overtime rates in awards to be "rolled up" into a single rate of pay "where it leaves any individual employee worse off".[3]

There are approximately 2.66 million workers who are "award reliant" and paid at the pay rate specified in the relevant award.[4] Many of these workers are likely to rely on penalty rates to meet their living costs. Analysis of 2023 Household Income and Labour Dynamics in Australia (HILDA) Survey data by Jamie van Netten and Josh Lipp in a report for the Fair Work Commission found that award reliant workers are more likely than the broader employee population to be low paid, live in low-income households and report financial stress. Award-reliant workers are more likely to be female, young, live a in regional area, work part-time and prefer more work hours than the broader employee population.[5] Key findings from this analysis are presented in Table 1.

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[1] This submission draws upon the arguments presented in the following article:
Chris F. Wright (2025) Employers warn Labor's push to lock in penalty rates is bad for business – but it's not that simple. *The Conversation*, 29 July.

[2] Eurofound (2022) *Overtime in Europe: Regulation and Practice*. Publications Office of the European Union: Luxembourg.

[3] The Hon Amanda Rishworth (2025) Protecting penalty rates a top Government priority as Parliament resumes. Media release, 19 July.

[4] Kelvin Yuen and Josh Tomlinson (2023) *A Profile of Employee Characteristics Across Modern Awards*. Fair Work Commission.

[5] Jamie van Netten and Josh Lipp (2025) *Award-Reliant Employees in the Household Income Distribution of Employees: An Update*. Fair Work Commission.

Table 1: Characteristics of award-reliant and low-paid award reliant employees

Employee characteristics	All employees (%)	Award-reliant employees (%)	Low-paid award reliant employees (%)
Women	50.0	55.2	58.2
Young (15-25 years)	20.6	47.1	
Young (21-25 years)			30.4
Live in a regional area	30.2	36.8	41.9
Work fewer than 36 weekly hours	30.4	57.9	55.1
Prefer to work more hours	14.3	28.9	28.5
Experience financial stress – had asked for financial help from friends or family	11.4	14.4	15.2
Experience financial stress – could not pay electricity, gas or telephone bills on time	10.4	12.0	13.6

Source: Jamie van Netten and Josh Lipp (2025) *Award-Reliant Employees in the Household Income Distribution of Employees: An Update*. Fair Work Commission.

The industries likely to be most affected by the proposed change include accommodation and food services (or hospitality), retail and health care and social assistance where relatively high shares of workers are award reliant.[6] These industries are also characterised by relatively high proportions of work hours being outside of standard business hours, and which may therefore attract penalty rates.

Earlier this year, the Australian Retailers Association and various retail employers proposed letting retail managers opt in for a salary pay rise of up to 35%, while trading off penalty rates, overtime and rest breaks.[7] That proposal relates to managerial staff and the Australian Retailers Association has said "it never sought to remove penalty rates from the award" for those not wanting to opt in. However, there is the possibility of such arrangements, if approved, being offered to employees on a 'take-it-or-leave-it' basis. Furthermore, the proposal, if implemented, could potentially set a precedent for similar arrangements to be extended to non-managerial workers.[8] Employers have sought similar changes to banking and clerical awards.[9]

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[6] Jamie van Netten and Josh Lipp (2025) *Award-Reliant Employees in the Household Income Distribution of Employees: An Update*. Fair Work Commission

[7] Fair Work Commission (2024, 2025) Australian Retailers Association – Submission and Reponse Regarding Proposed Variations to the General Retail Industry Award, AM2024/9, AM2024/33, AM2024/40.

[8] Australian Retailers Association (2025) Penalty rates Bill undermines choice, flexibility and remuneration for employees and employers. Media release, 19 July.

[9] David Marin-Guzman (2025) Bosses say WFH has made timesheets – and penalty rates – unworkable. *Australian Financial Review*, 13 March.

The Australian government argues the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 does not prevent awards from being made more flexible for employers – provided workers are not financially disadvantaged.

This claim stands in contrast with those from employer groups. The Australian Industry Group says the bill "will kill jobs".[10] Other employer groups warn the proposed changes deny employees choice about how they are paid, and will undermine workplace productivity at a time when the government is trying to improve it.[11]

For decades, unions have fought to keep the penalty rates, while employer groups have pushed for more flexibility to cut them.[12] Past experience in Australia and overseas shows that when workers' pay or conditions get worse, it can end up creating problems for business – especially those facing worker shortages.

In 2017, the Fair Work Commission decided to reduce Sunday and public holiday penalty rates for more than 700,000 workers covered by the retail, hospitality, fast food and pharmacy awards. In that case, the Fair Work Commission agreed with employer groups that these reductions would create more jobs. However, that conclusion did not bear fruit.

Professors Martin O'Brien and Ray Markey analysed employment data and did a survey (with union funding) of more than 1,800 employees and 200 owner-managers in retail and hospitality. Their analysis found no evidence of jobs being created by the 2017 penalty rates reduction.[13]

While workers are most likely to suffer when penalty rates are cut, there may also be negative consequences for employers. The accommodation and food services and retail industries, where workers are among the most award-reliant,[14] are also the lowest paid.[15] Both industries are characterised by persistently high job vacancies.[16]

[10] Ai Group (2025) Penalty rates plan is a union thought bubble that will kill jobs. Media release, 19 April.

[11] Christopher Kelly (2025) Retailers berate "heavy-handed" penalty rates bill. *Ragtrader,* 25 July.

[12] Ray Markey (2017) Explainer: where to from here on penalty rates? *The Conversation*, 3 March.

[13] Martin O'Brien (2019) Cutting penalty rates was supposed to create jobs. It hasn't, and here's why not. *The Conversation*, 16 May; Martin O'Brien and Ray Markey (2020) Labour regulation reform and sectoral employment outcomes: a case study of public holiday penalty rate reductions in Australia. *Applied Economics Letters*, 27(7), pp.559-563.

[14] Kelvin Yuen and Josh Tomlinson (2023) *A Profile of Employee Characteristics Across Modern Awards*. Fair Work Commission.

[15] Australian Bureau of Statistics (2024) Employee Earnings, August, https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings/latest-release

[16] Australian Bureau of Statistics (2025) Job Vacancies, Australia, May, https://www.abs.gov.au/statistics/labour/jobs/job-vacancies-australia/latest-release

Arrangements exchanging penalty rates for higher base salaries can lead employees to be worse off overall – in some cases, substantially so.[17] A study of chefs working in the restaurant industry published by Susan Belardi, Angela Knox and I found such arrangements to be widespread. These arrangements typically resulted in workers being paid below the relevant award. We found that:

> *"Many of the reported pay levels were in fact below the award because of inadequate reconciliation of the annualised salary with the hourly provisions. For example, one chef who reported an annualised salary of approximately A$47,000 would have been entitled to approximately A$70,000 if paid according to the hourly rate based on his reported working hours and weekend penalty rates".*[18]

This inadequate reconciliation of salary-based pay compared to hourly-based pay for workers receiving annualised salaries was a factor contributing to a common practice of very long work hours. We found that these ranged:

> *"… from 45 to 80 hours per week, an outcome exacerbated by employers' reliance on annualised salaries and failure to reconcile pay with working hours. Employers scheduled excessive working hours as a result and flexible, non-standard, working schedules were rarely available".*[19]

These arrangements were especially challenging for older workers and those with care responsibilities, forcing some leave the industry to find jobs with higher pay, better working hours and a better work/life balance.

Inadequate protection of penalty rates and job quality can thus exacerbate employers' recruitment and retention problems, which can lead to or worsen staff shortages. My research with colleagues at the University of Sydney and the University of Adelaide on horticulture, another industry with a high proportion of award-reliant workers, reached similar conclusions.[20]

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[17] David Marin-Guzman (2024) Court whacks CBA with record $10m fine for wage theft. *Australian Financial Review*, 15 February.

[18] Susan Belardi, Angela Knox and Chris F. Wright (2021) Too hot to handle? An analysis of chefs' job quality in Australian restaurants. *Journal of Industrial Relations*, 63(1), pp.3-26, at p.12.

[19] Susan Belardi, Angela Knox and Chris F. Wright (2023). 'The circle of life': The role of life course in understanding job quality. *Economic and Industrial Democracy*, 44(1), pp.47-67, at p.59.

[20] Joanna Howe, Stephen Clibborn, Alexander Reilly, Diane van den Broek and Chris F. Wright (2019) *Towards a Durable Future: Tackling Labour Supply Challenges in the Australian Horticulture Industry*. University of Adelaide / University of Sydney.

International research by the OECD[21] and academic studies[22] show that sector-wide arrangements that protect workers' pay and conditions, of which awards and multi-employer bargaining agreements are examples, can help drive greater business productivity.

When penalty rates are cut, there can also be consequences for the wider economy. A 2017 report from the Australian Institute's Centre for Future Work estimated the additional income generated by penalty rates adds $14 billion each year to the economy, which boosts aggregate demand.[23]

The research evidence suggests that without penalty rates, not only would workers be disadvantaged, but business problems relating to worker shortages, productivity and consumer demand might end up worse than before.

[21] OECD (2019) *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*. Paris: OECD.

[22] Colm McLaughlin (2009) The productivity-enhancing impacts of the minimum wage: Lessons from Denmark and New Zealand. *British Journal of Industrial Relations*, 47(2), pp.327-348.

[23] Jim Stanford (2017) *Tip of the Iceberg: Weekend Work and Penalty Pay in 108 Australian Industries*. Centre for Future Work at the Australia Institute.