The Hon Amanda Rishworth MP

Minister For Employment and Workplace Relations

GR25-000005

Senator the Hon Sue Lines
President of the Senate
Parliament House
CANBERRA ACT 2600

Dear President Sue

I am writing to advise you that the Australian Government provided its response to the Senate Education and Employment Legislation Committee's report on the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 (Bill) during debate in the Senate on Tuesday, 26 August 2025 and Wednesday, 27 August 2025.

During the debate, Senator the Hon Murray Watt welcomed the Committee's recommendation to pass the Bill, noted the Australian Greens' additional recommendation and addressed the Coalition's dissenting recommendations. I have enclosed extracts of the relevant Hansard.

I trust this information is of assistance.

Yours sincerely

Amanda Rishworth MP

30 / 10 /2025

Enc. *Extracts from Hansard – Senate 26 August 2025 and 27 August 2025*

economic units; they are often family owned and community based businesses supporting local jobs and community organisations. However, under this government, small businesses face record insolvencies, higher compliance obligations and rising operational costs. Unlike those opposite, we will always back small businesses, not burden them, so they can create jobs, build prosperity and keep communities strong. That is exactly what we are trying to do with this amendment. I don't have a high degree of confidence, but Labor can try and restore the faith of small business by supporting this amendment.

The bill also removes choice for workers who may prefer higher base salaries, stability in income or flexible arrangements over fluctuating penalty rates. The bill could limit work-from-home flexibility, with employers first forced into intrusive monitoring to meet recordkeeping rules. Many workers prefer the stability of a higher, more consistent base salary. This helps with budgeting, growing superannuation, borrowing capacity and avoiding income volatility. Women, in particular, highlighted problems where fluctuating penalty earnings make Centrelink and child support estimates very unreliable.

Employers should have the freedom to choose pay structures which best suit their circumstances. By forcing a one-size-fits-all framework, the bill locks employees out of arrangements which might better support them. Even if the majority of employees want a particular arrangement, the commission—and this is particularly egregious—is prevented from approving it if any hypothetical worker might at some point be worse off. This denies employees the ability to strike a balance between financial security and workplace flexibility, and this goes to the heart of denying employees proper choice in the workplace. It also undermines debates on remote work and flexible hours—issues that matter deeply to today's modern workforce. Instead of empowering employees, the bill strips them of genuine choice. True reform should expand workplace options. True reform should drive the will to invest. True reform should excite young small businesses to grow and to hire more employees, not hamper their growth, not hamper investment and, in many cases, not shut them down. Of course we've heard a lot about productivity in the last few weeks. The productivity roundtable was nothing more than a cover, after Labor spent three years telling Australians that there was nothing wrong with the economy—everything was going just fine. We got through the election. Now the government, at least the Treasurer, is admitting that reform is required, and much more needs to be done to address rapidly declining productivity, rapidly skyrocketing costs of doing business and a very depressed investment framework for so many businesses.

Australia and Australian businesses need policies which boost output not entrench, rigid one-size-fits-all arrangements. Business groups warned that the bill would make rostering more rigid and complex, diverting resources into compliance instead of productive work, and that existing above award arrangements that deliver higher pay and stability could be invalidated, leaving some workers worse off. Again, that goes to the lack of flexibility in employee choice. We know, in the climate where Australia's productivity has gone backwards under Labor in just three years, it has fallen by more than five per cent. This is the last thing that so many businesses need.

Since the coalition left office, living standards have plummeted by around six per cent. Australians are working harder, but they are getting less in return. The government needs to understand that it's not the government that creates jobs; it's businesses—large, medium, small and family businesses. In this depressed climate that we are currently in, where our economy is whimpering along, businesses need every possible opportunity and encouragement to invest. As I say, in Victoria, so many businesses are struggling just to keep the doors open, while looking further afield to states like South Australia and New South Wales where they see a much more investment friendly climate.

This is a disappointing bill before this parliament. As the Senate committee inquiry heard, this government did not want to have confirmed the Fair Work Commissioner has both the power and proven track record to safeguard penalty and overtime rates.

The important point to also make is that the commission is not only empowered but required, under section 134 of the Fair Work Act, to maintain a fair and relevant safety net for employees. The Fair Work Act is several thousand pages. It is an enormous burden particularly on small businesses. This is going to make things so much tougher, and, frankly, small and family businesses deserve better.

Senator WATT (Queensland—Minister for the Environment and Water) (19:18): I'd like to thank senators for their contributions to the debate on the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025. This bill is a clear, simple and practical amendment to protect penalty and overtime rates as fundamental entitlements relied on by millions of award reliant Australian workers.

The Albanese government is committed to delivering workplace relations reforms with a clear goal insight: to get wages moving for Australian workers. We've heard strong support for this bill and the fundamental importance of penalty and overtime rates for employees, particularly from some of the lowest-paid workers in our country—those who keep Australia running on weekends, public holidays, early mornings and late nights.

We prioritised this bill as one of the first legislative acts of this government because we will always act to protect the pay and conditions of Australian workers. Currently, penalty and overtime rates in modern awards can be rolled up into a single rate of pay, leaving some employees worse off. And, in fact, we're actually seeing attempts by some employer groups to do that at this very moment in time, particularly in the retail, banking and clerical industries. This should not be possible to do. Award reliant employees, who rely on their penalty and overtime rates deserve steadfast protection of those entitlements in the minimum safety net.

This bill introduces a new principle into the Fair Work Act to protect penalty and overtime rates in modern awards. It specifically ensures that these rates cannot be reduced or substituted in ways that do not fairly compensate employees for the penalty and overtime rates that they would otherwise receive. This bill enshrines protections for penalty and overtime rates in modern awards while not affecting individual flexibility arrangements, the bargaining framework or the Fair Work Commission's ability to correct errors or clarify award terms.

This amendment sets out the important principle that penalty and overtime rates cannot be reduced. It does this by adding a new section to the Fair Work Act which says that, when exercising its powers, the Fair Work Commission must ensure that, firstly, the specified penalty rate or overtime rate in modern awards is not reduced and, secondly, modern awards do not include terms that allow employers to roll up penalty or overtime rates into a single pay rate that does not fairly compensate employees for the penalty and overtime rates they would otherwise receive. This bill introduces a simple amendment to ensure that penalty and overtime rates in the modern awards safety net are protected.

I'd like to thank the Senate Education and Employment Legislation Committee for their report on the bill. I know that recommendation 1—the only recommendation of the committee—is that the bill be passed. The committee process provided stakeholders with an opportunity to share their views publicly and it clearly demonstrated the importance of the bill and the strong support it has received.

I thank the Australian Greens for the support of the chair's report, the intent of the bill and the recommendation from the committee to pass the legislation. I note the Australian Greens' additional recommendation 1, which was that the Australian government consider amending regulation 3.34 of the Fair Work Regulations 2009 to make it an explicit requirement of employers to keep time and wage records, even if exemption rates or an equivalent is in effect. The government's view is that an amendment of this nature is not necessary. The new principle requires the commission to ensure that any rolled-up pay arrangement must fairly compensate employees for the penalty and overtime rates they would otherwise receive. It will be a matter for the independent commission to satisfy itself that this new standard is met.

In contemporary considerations of terms that substitute penalty and overtime rates, the commission has required recordkeeping as a means of assessing whether an employee is left worse off. Annualised wage arrangements, for example, contain a recordkeeping requirement to ensure an employee receives their full entitlements for their actual hours worked. If an employer does not meet their recordkeeping obligations under the Fair Work Act or applicable modern-award term, the Fair Work Ombudsman is there to take enforcement action.

In relation to the coalition's dissenting recommendations, recommendation 1 from the coalition mentioned that the Australian government should be required to prepare a comprehensive regulatory impact statement assessing the costs, benefits and productivity effects of the bill before its passage. Let me be clear—the government is firmly committed to evidence based policy development and decision-making. This reform, as is the case with all reforms, was assessed to determine the appropriate level of impact analysis required. The Office of Impact Analysis determined that an impact analysis was not required for this reform, because it does not impose new obligations on employers, nor does it introduce any new regulation or processes for them to comply with. It's actually about sticking with things as they currently stand rather than imposing new obligations.

To address concerns about the bill's impact on productivity, it has never been and never will be the solution—at least for this government—to make workers do more for less. This government is committed to improving productivity and enhancing economic resilience, but we do not accept that sending hardworking award-covered workers backwards through reductions to their penalty and overtime rates is the way to do this. The path to achieving flexibility and productivity gains can be found in cooperative and good-faith enterprise bargaining rather than by undermining award entitlements.

Our bargaining reforms increased access for workers and employers, including small business, to negotiate agreements with their employees and unions. This includes greater access to multi-employer bargaining, reducing the cost and effort of the bargaining, and changes to improve clarity and certainty for agreement approval. We're now seeing record enterprise agreement coverage with significantly improved wages outcomes for workers. A number of points have been made about the role of the Fair Work Commission. We respect the commission's role as the independent industrial tribunal. The commission will continue to interpret and apply the Fair Work Act,

including the new principle introduced by this bill. This process will be guided by its usual consultative approach, ensuring all interested parties have the opportunity to present their views.

This bill also preserves the commission's existing powers to remove an ambiguity or uncertainty or to correct an error in a modern award. We've listened to concerns raised following its introduction that this bill could require the commission to review all modern awards for compliance with the new principle or to review penalty and overtime rates even beyond the scope of a specific application. This has never been the intent of this bill. We are confident the bill as introduced would not have operated in this way; however, this government is committed to genuine consultation, including with employer representatives and unions, and we amended the bill in the House for the avoidance of doubt and to further provide certainty to stakeholders. The bill is unequivocally clear. It will not require the commission to undertake a review of all modern awards, initiate a review of any award terms outside the scope of an application before the commission or exercise its powers under parts 2 to 3 of the Fair Work Act to make, vary or revoke modern awards.

In conclusion, for many award-reliant employees, penalty and overtime rates are a critical part of their take-home pay. As we know, it's low-paid workers, women and young people—as well as those working in retail and hospitality, who often work unsociable and irregular hours—who are more likely to be reliant on awards. This bill is about fairness. It's about respecting the millions of Australians who work public holidays, weekends, late nights and early mornings. If you get your penalty rates, you deserve them. This bill is about making sure the safety net does what it's meant to do—protect those who need it most. On that basis, I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Ciccone): The question before the chair is that the second reading amendment that was moved by Senator Kovacic be agreed to. It being after 6.30, we'll have to defer this division until the next day of sitting.

Aged Care and Other Legislation Amendment Bill 2025

Aged Care (Accommodation Payment Security) Levy Amendment Bill 2025

Consideration resumed of the motion:

That these bills be now read a second time.

Senator RUSTON (South Australia—Deputy Leader of the Opposition in the Senate) (19:27): I rise to speak on the Aged Care and Other Legislation Amendment Bill 2025 and the Aged Care (Accommodation Payment Security) Levy Amendment Bill 2025, which are integral in delivering the Aged Care Act 2024. Hence, they are absolutely essential to delivering the recommendations of the aged care royal commission, which was instituted under the former coalition government.

We will not be standing in the way of the passage of these bills, but—let me be very clear—the Aged Care Act 2024 was a package of reforms of the Labor Party's making. It was not an act co-designed alongside the coalition. That's why it is of no surprise that, in the first week of the 48th Parliament, this government has introduced this bill, in particular to amend 325 items of the Aged Care Act 2024 that they pushed through this parliament, refusing to pass any sensible amendments put forward by anybody in this chamber. Many of those could have been rectified during the debate on the Aged Care Act had the government listened to the sector and to the people in this chamber. The coalition always knew a reform of this size could not be implemented in just a matter of months. That's why, during the debate on the Aged Care Act, the coalition moved amendments to ensure that the Home Care Packages Program in particular could exist on a transitional basis without the need to amend the Aged Care Act or to delay its enactment.

This amendment mitigated the risk of department and sector readiness by creating transitional provisions to ensure the Aged Care Act 2024 could come into effect on 1 July 2025, as the government had been promising, and by ensuring that the new Support at Home program, with the promised additional 83,000 home-care packages, could commence on 1 July 2025. But those opposite voted against it, and now, as a result of their failure to actually listen to sensible reforms—to provide the flexibility to implement the reform—older Australians have been denied their rights for many more months. And they've been denied the care that they've been assessed as needing by this government. That's because of their failure to be prepared and put the transitional provision in place—

Debate interrupted.

ADJOURNMENT

The DEPUTY PRESIDENT: I propose the question:

That the Senate do now adjourn.

consultation was held on a confidential basis, but it has led to a stronger bill, and we thank participants for their valuable engagement.

Senator KOVACIC (New South Wales) (11:09): Would you be able to tell us how many individual small businesses were consulted—noting the privacy elements, just the number?

Senator WATT (Queensland—Minister for the Environment and Water) (11:09): As the senator would understand, the usual practice, when it comes to legislation, is to consult representative bodies, who then consult their members. So I would imagine that groups like COSBOA and ACCI, among others, would have consulted their membership which, in those cases, would have included small business.

Senator KOVACIC (New South Wales) (11:09): Noting that, would you be able to tell me why the repeated concerns of industry bodies like COSBOA, ACCI and the Ai Group were ignored in relation to the drafting process, where they gave specific recommendations to take out ambiguity and those were not considered?

Senator WATT (Queensland—Minister for the Environment and Water) (11:10): The fact that you consult on a bill doesn't necessarily mean that you take on board all the feedback you receive. I'm aware that some of the views the ACTU had about this legislation were not taken into account as well. Just because we consult with different groups doesn't mean we take on board what they say. An amendment was made to this bill in the House based on feedback we'd received from employer groups, including the Ai Group, regarding the retrospectivity point. There's an example where we have listened and taken action on the basis of that feedback.

Senator KOVACIC (New South Wales) (11:10): I move the amendment in my name as circulated on sheet 3408:

(1) Schedule 1, item 1, page 3 (lines 6 to 20), omit section 135A, substitute:

135A Special provisions relating to penalty rates and overtime rates

(1) In exercising its powers under this Part to make, vary or revoke modern awards, the FWC must be satisfied that:

(a) the rate of a penalty rate or an overtime rate that employees are entitled to receive under the modern award is not reduced; and

(b) modern awards do not include terms that substitute employees' entitlements to receive penalty rates or overtime rates where those terms would have the effect of reducing the additional remuneration referred to in paragraph 134(1)(da) that an affected employee would otherwise receive under the modern award.

(2) Subsection (1) does not apply when the FWC exercises powers under this Part pursuant to:

(a) section 144 (flexibility terms); or

(b) section 160 (which deals with variation to remove ambiguities or correct errors); or

(c) paragraph 157(3)(a) (own initiative).

(3) Paragraph (1)(b) does not apply when the FWC exercises powers under this Part in relation to terms of a modern award that substitute employees' entitlements to receive penalty rates or overtime rates where those terms existed immediately prior to commencement of subsection (1).

(4) Paragraph (1)(b) does not apply when the FWC exercises powers under this Part in relation to terms of a modern award that substitute employees' entitlements to receive penalty rates or overtime rates where those terms are expressed to apply only to a small business employer.

(5) Subsection (1) does not limit the FWC's ability to make a determination to vary a modern award where the determination is made:

(a) to ensure that awards are operating effectively by addressing any anomaly or technical irregularity in the award arising from either the making of the award or past variations to it; or

(b) as an outcome of proceedings commenced by the FWC of its own motion if the FWC is satisfied it is necessary to achieve the modern awards objective and compliance with section 138, or

(c) following the FWC being satisfied that the variation is fair to employees and that it would:

(i) improve productivity; or

(ii) promote employment opportunities or the participation of employees in paid work; or

(iii) assist employees to balance their work and family commitments.

Senator WATT (Queensland—Minister for the Environment and Water) (11:11): This amendment is a suite of amendments to change the scope and parameters of the principle by providing carve-outs, exemptions and competing factors for the commission in making its decision. I'm not sure the Senate would agree with that characterisation, but I think that is what we see it as attempting to do.

The government will oppose this amendment. The amendment seeks to dilute the bill in numerous ways by providing carve-outs, exemptions and competing factors for the commission in making its decision. Not only does this amendment seek to erode the fundamental purpose of this bill, which is to protect penalty rates; it also looks to

add an array of additional complexity into the principle and put additional parameters on the commissioner's discretion. I note that the complexity and the independence of the commission are two things the coalition has criticised this bill for.

We've consulted genuinely and transparently on this bill with unions and employer representatives. The bill has been through a Senate committee process, where stakeholders were provided an opportunity to publicly provide feedback. The outcome of that process is clear—that the bill should be passed. As a statement of principle, the government believes that every award-reliant worker deserves protection of their penalty and overtime rates. For those who rely on those penalty and overtime rates to make ends meet, the bill gives them certainty that their take-home pay will not go backwards.

Senator KOVACIC (New South Wales) (11:12): Noting your comments about engaging genuinely and transparently, are you able to confirm for me whether any of the stakeholders involved in the process were required to sign a nondisclosure agreement?

Senator WATT (Queensland—Minister for the Environment and Water) (11:12): I answered in one of my previous answers that what's known as the committee of industrial legislation process, which is a formal mechanism that the government has consulted for some time when it comes to workplace relations legislation, involves consultation with states, territories, employer groups and unions. I think I said previously they were confidential discussions. I'm advised that the process there is that all participants in that process sign a nondisclosure agreement that lasts for 12 months and covers every bit of legislation that comes up in the meantime. We followed the standard practice.

Senator KOVACIC (New South Wales) (11:13): How does the government justify introducing the 36th major change to the Fair Work Act since 2022 when 34 of those changes have disproportionately affected Australian small businesses?

Senator WATT (Queensland—Minister for the Environment and Water) (11:13): I don't need to look at my talking points for this one! This government, since the time we were elected in May 2022, made very clear that we intended, as a government, to lift Australian workers' wages. We wanted to get wages moving again. We were coming out of a 10-year period of coalition government that deliberately suppressed wages, that was affecting living standards, and we continue to make no apologies for introducing a series of amendments, including these ones, which are about getting wages moving again and allowing Australians to deal with cost-of-living pressures. I'm not sure what the opposition's position is on this bill, but we'd like you to support this one as well.

Senator KOVACIC (New South Wales) (11:14): Minister, I'm impressed by your lack of need for talking points; well done! I acknowledge your comments in relation to lifting wages. I want to get an understanding of the scope and the thinking around, again, the impact to Australian small businesses. You have an awareness that we are in a housing crisis in this country. The highest rate of insolvencies is in construction businesses. Again, I speak to the 35 major changes—and this would be the 36th—for Australian small businesses. What was the consideration made as to the impact of this change to Australian small businesses, if any?

Senator WATT (Queensland—Minister for the Environment and Water) (11:15): I might start with a broader answer around how we've approached the range of workplace relation changes we've made in relation to small business. We have always acknowledged, in each piece of legislation that we've passed since being elected in 2022, that in some cases small businesses need further time to adjust to changes than what we expect of big businesses. For example, just this week we're celebrating the one-year anniversary of the right to disconnect. That has only just come in, as of this week, for small businesses. It came in for big businesses 12 months ago. There are other changes that we've made, which I've forgotten for the moment, which applied to big business in the first instance, and 12 months was given to small businesses before the requirements came in for them. That would be an example of how we have attempted to consider the different needs of small businesses when making some of these changes.

On this bill, there's a fundamental point to be made, which is that this bill is not altering existing conditions. It's not imposing new obligations. I've heard Senator Kovacic and other coalition senators talk about new obligations and onerous burdens. What it's doing is preserving existing conditions rather than allowing them to be cut. This bill does not alter existing employer obligations, including those of small business. It does not introduce new costs or impose additional requirements on small business. Modern awards or industry or occupation based instruments provide a safety net of minimum terms and conditions for Australia's lowest-paid employees, and we think that every Australian employee deserves the same minimum protections in modern awards regardless of whether they're employed in a big business or a small business. It's not about requiring small businesses to do something new; it would be about businesses, large or small, reducing and cutting the existing conditions that apply under modern awards. All they need to do is keep doing what they're doing, rather than doing something new.

Senator KOVACIC (New South Wales) (11:17): Thank you, Minister. I guess there is some dispute as to whether that is actually the case. Primarily, the issue is that Australian small businesses could see current agreements reviewed based on the retrospectivity of this legislation. So this bill actually applies identically to a small cafe with three, four or five staff as it does to a large multinational corporation with thousands of employees, despite having significantly different capacities to manage regulatory and HR compliance. On the basis of those concerns, would the government actually consider carving out or providing additional time to Australian small businesses as, as you have just articulated, you have done historically?

Senator WATT (Queensland—Minister for the Environment and Water) (11:18): I might answer that question by dealing with this point around retrospectivity, which I know has been a concern of various groups, around this bill. As with all changes to the modern awards framework, once the bill is passed, which we expect it will be, parties will be able to apply to vary modern awards in line with the amended framework, so it's prospective in its operation. Even without this legislation, applications could be brought to test existing exemption rates against the modern award's objective. This reform strengthens protections that already exist. However, nothing in this bill requires the commission or parties to take immediate action in relation to existing exemption rates, except to comply with their current award obligations.

Senator KOVACIC (New South Wales) (11:19): Thank you, Minister. I'm a little bit confused by what you just said. In the same sentence you said nothing will change, but you did say, if I understood correctly, that there is ability to test existing exemption rates, which means that is a retrospectivity because existing exemption rates already exist and Australian small businesses effectively have those, or may have those. If they can be tested, then that would mean that Australian small businesses would actually have to do something on the basis of those agreements being tested, even though they themselves and their employees are making no change.

Senator WATT (Queensland—Minister for the Environment and Water) (11:19): In terms of what I just said, it's really about stating the principle that has always existed, which is that parties can make applications to the commission to vary awards. We're saying that that ability for a party to make an application to the commission to vary an award applies now in relation to this point just as it has always applied.

Senator KOVACIC (New South Wales) (11:20): Minister, I'm going to read you a quote from the ACTU's submission from the hearing a couple of weeks ago:

> The amendments will also apply to awards made before the legislation's commencement. This will enable unions to make applications to vary existing award terms, e.g. requesting the FWC—
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> the Fair Work Commission—
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> to use the new principle to remove exemption rate clauses or other loaded rates provisions such as annualised salaries where they have the effect of reducing the additional remuneration employees should otherwise receive.

Minister, can you please explain to me how this is not retrospective? I can't see how you can deny that this is retrospective.

Senator WATT (Queensland—Minister for the Environment and Water) (11:21): All I can say is that parties have always, do always and will always—depending on what future governments decide—have an ability to apply to the commission to vary terms of an award. My interpretation is that the ACTU is stating the obvious—that parties can apply to seek to vary award terms, just as they could yesterday and they could the day before. In terms of that ability, nothing changes because of this bill.

Senator KOVACIC (New South Wales) (11:21): Just so I'm clear, the ACTU is right in what they stated? The amendments will also apply to awards made before the legislation's commencement, which, in my understanding, makes it retrospective?

Senator WATT (Queensland—Minister for the Environment and Water) (11:22): At the risk of repeating myself, the bill is not retrospective in its operation. Any decision that the commission makes based on an application to vary the awards would operate from the date of that decision rather than looking backwards. It's not retrospective in the sense of changing people's entitlements from a year ago or two years ago. It's about changing the existing terms in that award, and that change would operate prospectively rather than retrospectively. People can and do seek to make changes to award conditions every day of the week in the Fair Work Commission.

Senator KOVACIC (New South Wales) (11:23): Thank you, Minister. I don't like to make you repeat yourself, but I just want to get this right. I don't want to get this wrong, because this is something that is really important to Australian small businesses and to how they can effectively operate and continue to employ people in our country. The ACTU said:

> The amendments will also apply to awards made before the legislation's commencement.

Is the ACTU right, or is the ACTU wrong?

Senator WATT (Queensland—Minister for the Environment and Water) (11:23): It's for the ACTU to decide how they express themselves, and I'm not going to say whether they're right or wrong, just as, if you present a quote from COSBOA, it's up to them what they say. What I'm saying is that every single day employer groups and unions make applications to the commission to vary the terms of an award that may have been decided years ago. That is normal practice, and that will apply here as well.

Senator KOVACIC (New South Wales) (11:24): I apologise; I probably wasn't clear. In asking you whether the ACTU was right or wrong in terms of what they stated, I'm asking you, in the context of being the minister responsible and in terms of the way that you believe that this bill will apply, whether it will be retrospective in the way that they have clearly articulated in their submission. So, effectively, an award changed last week can now be changed next week.

Senator WATT (Queensland—Minister for the Environment and Water) (11:25): Again, even if this legislation were not to be introduced, unions and employers groups could bring applications to the commission to vary the terms of an award. They can do that now. Those changes operate prospectively. Wage rates and other conditions are changed prospectively rather than retrospectively, and that's the same here.

Senator KOVACIC (New South Wales) (11:25): To confirm, it's incorrect to state that this bill is not retrospective?

Senator WATT (Queensland—Minister for the Environment and Water) (11:25): This bill is not retrospective.

Senator KOVACIC (New South Wales) (11:26): Thank you very much. I think we're all just as clear as each other as to whether the bill is retrospective or not! COSBOA gave evidence that small businesses already spend an average of 15 hours per week on compliance. This is another layer of regulatory compliance for them. I take it that you note that nothing is changing, but clearly things do change, because we have a legislation being put before the parliament to protect something that, in our view, didn't require protection based on what you have articulated in relation to the Fair Work Commission's current powers. Can you explain to me why it was necessary to incorporate small businesses into this bill and why they have not been carved out?

Senator WATT (Queensland—Minister for the Environment and Water) (11:27): I made the point earlier that the government's view is that regardless of where someone works, whether they work for a major corporation or a small business, they're entitled to have their penalty rates protected. We're talking about people—typically quite low-income earners, typically women, typically part time or casual workers, typically young people—who work unsociable hours. My family and I, every now and then, like to be able to get a cup of coffee or something on a public holiday, and I feel entirely comfortable with paying a little bit more in order to have that cafe attendant get a bit more in their pocket because they're giving up the opportunity to have that public holiday.

I think that we've got a fundamental difference of opinion about whether there's a new obligation being imposed here or not. What this is about—this point about compliance for small businesses—is that every time award pay rates change, small businesses adjust and pay people the new wage rates. What we're saying here is no different in the sense that this is about preventing the Fair Work Commission from cutting penalty rates. Just as small businesses pay new wage rates when they're handed down by the commission under the award and they follow the award, it's about preventing the commission from doing something, rather than imposing some new obligation on small businesses that they don't already have. It just affects the pay rates that people working in a small business or a big business earn.

Senator KOVACIC (New South Wales) (11:28): I think we all believe that people working unsociable hours, weekends or public holidays deserve the penalty rates that they receive. We don't have any concerns in relation to that. Our concerns lie with the necessity of this bill, why it has been put forward in the manner that it has and the impacts that we believe it will have on Australian small businesses. Could I ask was there ever any consideration given to exempting small businesses. I note your comment that you believe there will be no change, but clearly the potential for change is there. That is an ambiguity and that is a potential unintended consequence of this bill.

Senator WATT (Queensland—Minister for the Environment and Water) (11:29): Certainly, in the period that I was the workplace relations minister and announced this commitment during the election campaign, there was no consideration given to exempting small businesses. Again, that's because our government's view is that, regardless of whether you work for a large company or a small business, you're entitled to penalty rates.

I have heard the senator say on a number of occasions that the coalition supports penalty rates. It seems a little bit odd, then, to be asking questions about exempting small businesses. That would suggest to me that the coalition doesn't support penalty rates for small businesses. That would be the only reason to seek a carve-out for small businesses. To my knowledge, exempting small businesses from this has never been considered, for the reason I've explained.

Senator KOVACIC (New South Wales) (11:30): To be very, very clear, we're not seeking a carve-out of penalty rates for small businesses. Nobody has suggested that at any point in time, and nor is that, in any way, shape or form, even possible. We don't seek it, nor do we want it. This is where I'm confused. On the one hand, you're telling me there's no material change. On the other hand, you're saying you haven't sought an exemption for small businesses, because you think that everybody should pay penalty rates, whether they're a small business or a large business. Which is it? Is it that there is no change, or is there going to be some kind of significant change that you see coming forward as a result of this legislation that you want to ensure that all businesses comply with? That's what we're trying to understand. Either there is a change or there isn't a change. If there is no change, what is the purpose of the legislation?

Senator WATT (Queensland—Minister for the Environment and Water) (11:31): I'm not saying—and I don't think I ever have said—that there's no change involved from this legislation. As you say, the point of introducing this legislation is to make a change. The point is that there's no change for small businesses, in the sense that they will continue paying their workers what the award requires them to pay or, if they do have an EBA, pay them the EBA rates. What changes is what the commission can do and the wage rates that can be paid. What changes, as a result of this legislation, is that the commission cannot remove penalty rates in the way that it is currently able to. When the commission hands down its decisions about pay rates under an award, that's what employers pay, whether they be small or big businesses.

I've been searching around for a bit of material on this. One of the prompts for this legislation was that, right now, at the Fair Work Commission, we've got peak bodies representing large and small retail businesses and peak bodies representing banks and the clerical industry who are seeking to cut the penalty rates in the awards that govern their workers, through offering rolled-up salaries that go nowhere near what people would earn if they were getting penalty rates. What changes is that employer groups would not be able to cut penalty rates, or seek to cut penalty rates, in the way that they are currently able to do. Nothing changes for a small business in the sense that today and tomorrow they have to pay the legal rates of pay to their workers. It's just that, in the meantime, penalty rates can't be cut. As long as small businesses follow the law and pay the award, they've got nothing to fear.

Senator KOVACIC (New South Wales) (11:33): If a current Australian small business which you deem has cut penalty rates has an agreement with one of their employees, then those are the agreements that you would seek to be changed by this legislation that would then create an impost for that small business. Is that what you're saying?

Senator WATT (Queensland—Minister for the Environment and Water) (11:33): This goes to this point about retrospectivity. I think the concern that you're expressing is that, if an award has previously been altered to reduce penalty rates, there might be some ability through this legislation to rectify that, to change that. That is not possible under this legislation. It's about what the current terms are in an award, what they say about penalty rates and not allowing those penalty rates in the current award to be cut.

Senator KOVACIC (New South Wales) (11:34): I note your comments in relation to the Fair Work Commission. Why remove the discretion of the Fair Work Commission when it already has the statutory responsibility to protect penalty and overtime rates?

Senator WATT (Queensland—Minister for the Environment and Water) (11:34): The Fair Work Act already lays down rules, if you like, for the Fair Work Commission to take into account when making decisions. This is simply another requirement for the Fair Work Commission to consider when making decisions, just as the entire Fair Work Act includes other matters that the Fair Work Commission needs to take into account. As I say, it's very common for governments on both sides of the chamber to make changes to what the Fair Work Commission can and can't consider. As I've said, one of the reasons that we've acted here is that there are current cases before the Fair Work Commission where we see employer groups trying to cut penalty rates in a way that we don't think is fair.

I mentioned the retail award matter that's before the Fair Work Commission at the moment. In that case, we have parties seeking to vary awards, and, in any case that hasn't yet been decided by the Fair Work Commission, they'll need to take into account the laws as they exist, which will presumably include this law once it has passed. And we are concerned about what some of the employer groups are trying to do in the retail award matter. In the submission that the Shop, Distributive and Allied Employees Association produced to the commission in this award variation case, they provided evidence of members of their union—shop assistants—who would be more than $1,000 worse off each year and model rosters that would be more than $5,000 worse off each year under the proposed exemption rate being put forward by the employer. Now, I think all senators in this chamber would recognise that shop assistants don't tend to be highly paid individuals, and for them to risk losing more than $5,000 every year because of what the employer groups are seeking to do to penalty rates—we don't think that's acceptable.

Senator KOVACIC (New South Wales) (11:36): Minister, given what you've just read out—that you're relying heavily on union evidence to make your assertion—will you acknowledge then that the question of cutting penalty rates remains contested and that, until the Fair Work Commission is allowed to undertake an objective and independent process, it can't be said with certainty that those penalty rates are actually at risk of being cut? The Fair Work Commission hasn't made that assessment; that's an assessment of the union movement.

Senator WATT (Queensland—Minister for the Environment and Water) (11:37): Yes, of course it will be an assessment of the Fair Work Commission in that case and in every other case, but what we're doing through this law is laying down principles that the Fair Work Commission need to take account of. Should we pass this law, those principles will include that you can't cut penalty rates from awards.

Senator KOVACIC (New South Wales) (11:37): I would probably say that the Fair Work Commission is not being allowed to undertake that objective and independent assessment, because we are overlaying the legislation and actually taking away the Fair Work Commission's authority to make that assessment of their own accord. Can you clarify that for me one more time, and then I'll proceed to a different question.

Senator WATT (Queensland—Minister for the Environment and Water) (11:38): As I've said, it is normal practice for governments of the day to introduce laws that set, if you like, parameters for the Fair Work Commission to work within, and that's what we're doing here. The commission will continue to interpret and apply the Fair Work Act, including the new principle introduced in this bill, and they will continue to make decisions, just as they have always done.

Senator KOVACIC (New South Wales) (11:38): Could I ask why the drafting hasn't been tightened to guarantee that exemption rate clauses and annualised salary provisions that have already been approved by the commission can't be reopened?

Senator WATT (Queensland—Minister for the Environment and Water) (11:39): Even after this law is changed, exemption rates will be permitted in awards; it's just that they need to take into account this principle around not leaving people worse off, essentially, by cutting their penalty rates. But exemption rates will be permitted.

Senator KOVACIC (New South Wales) (11:39): That wasn't exactly my question; my question was about tightening the drafting to ensure that exemption rate clauses and annualised salary rates that are already approved—agreements that are already in place and have already been approved by the Fair Work Commission—can't be reopened by this legislation. It's about if there's already an agreement in place.

Senator WATT (Queensland—Minister for the Environment and Water) (11:40): I think we're back to the same point about retrospectivity in that, right now, any party can go to the commission seeking to vary a term of an award, whether it be about exemption rates or anything else. Nothing changes in that respect, and I guess that's why we've left the drafting the way it is.

Senator KOVACIC (New South Wales) (11:40): That'll take me to an example of a retail worker, one that you gave yourself a while ago. It made me think of my own daughter who, while she was at uni, worked at a major retailer and often worked into the evenings, on weekends and early mornings, and there are many other people that have done the same. It's often also the remit of single working mothers, who work hours that might fit in with their care arrangements for their children. If a person has set up an agreement with their employer that works best for them, that encapsulates the average working hours and gives them a set, regular income that they have confidence in, knowing that that will be for both ongoing hours and ongoing income without any variation or fluctuation, that is very important when estimating income for Centrelink when it comes to family tax benefits and parenting payments and also in relation to child support payments. This worker has come to this agreement with their employer because it works for them.

It also works for their employer. Let's say it's a small retail store. Under this current legislation, if in some circumstances it could potentially be based on some hypothetical scenario—not on the actual scenario of that worker but on some hypothetical, made-up scenario somewhere—that that worker's penalty rates have been cut, will this bill require that worker and that employer to exit that agreement and take up a different agreement directed by this legislation, against their own effective flexibility requirements and what actually suits them and their needs best?

Senator WATT (Queensland—Minister for the Environment and Water) (11:42): The short answer is that it wouldn't change the situation for someone on that kind of agreement. One of the points we've been making in advocating for this change is that we are fine with employers, employees and unions negotiating terms that apply to a particular business. In that negotiation, it may be that the parties agree to make some changes to penalty rates in return for pay rises or that there are changes to conditions. That's the nature of an agreement. But an award is different. What this legislation is about is the award. The award sets the minimum safety net. What we're saying is that, when there hasn't been an agreement reached in a workplace, in that situation, it shouldn't be possible to cut penalty rates, in the absence of that kind of negotiation or agreement.

I think you mentioned your daughter's case working for one of the major retailers. They all have enterprise bargaining agreements that they've reached with their employees and typically with a union. That's the point we're making—if people want to discuss changes to penalty rates, changes to conditions and changes to wage rates in an enterprise-level way, then that should be done through an agreement rather than by taking away penalty rates from the minimum standards, which are set in an award.

Senator KOVACIC (New South Wales) (11:44): Thank you, Minister. Can I ask this then: you made a comment—and I was listening intently to your explanation—about an agreement between an employer, an employee and the union. Do you have a concern with the fact that employees and employers may wish to come into these arrangements and into these agreements without the intervention of a union?

Senator WATT (Queensland—Minister for the Environment and Water) (11:44): It's entirely a matter for an individual employer, its workers and the relevant union to come to an agreement around the pay and conditions that are provided in that workplace. Of course, they've got to operate within the parameters of the law. I'm not going to express judgement about whether a particular agreement is a good one or not. It's obviously the role of the Fair Work Commission to oversee that process.

I'm remembering now that that's one of the other distinctions between making this change to effect awards and to effect agreements. Agreement-making is supervised by the Fair Work Commission to ensure that the parties don't end up worse off, essentially. If someone is paid on an award, there's no supervising process as that employee starts work and gets paid under those conditions; that is all done when the award terms are set. That's why we're saying that, when it comes to setting the terms of the award, penalty rates shouldn't be cut.

Senator KOVACIC (New South Wales) (11:46): I'm not sure that that clarifies the question that I asked. Is part of this legislation or the purpose of this legislation a move to ensure that employees and employers are unable to make their own agreements including flexible working arrangements in relation to what best suits them without the intervention of a union?

Senator WATT (Queensland—Minister for the Environment and Water) (11:46): Nothing in this bill prevents employers, workers and unions coming to whatever arrangement they want to reach. This bill will also not apply to what are known as 'individual flexibility agreements'. What this bill will do is prevent the minimum standards set by an award from cutting penalty rates.

Senator KOVACIC (New South Wales) (11:47): Thinking again about the retrospectivity of this, has the department provided legal advice as to whether the bill's current wording exposes employers to retrospective claims, and, if not, was it sought in the first place?

Senator WATT (Queensland—Minister for the Environment and Water) (11:47): The bill is based on departmental advice. I'm sure, in the process of that, they've taken advice from lawyers, but it's based on the advice from the department that it's not retrospective in its operation.

Senator KOVACIC (New South Wales) (11:47): Will that advice be released, or will you commit to releasing that advice?

Senator WATT (Queensland—Minister for the Environment and Water) (11:47): I think what I normally do at this point is take that on notice.

Senator KOVACIC (New South Wales) (11:48): What protections will small businesses have against unions bringing applications to vary existing award terms under this bill?

Senator WATT (Queensland—Minister for the Environment and Water) (11:48): If I've understood your question correctly, Senator, you're asking what protections there will be for small businesses to stop unions seeking to vary awards to make use of this. As I've said many times, it happens on a daily basis that unions and employer groups seek to vary awards. I would expect that unions will make all sorts of applications, just as employer groups will. So I can't offer that kind of protection, because that's what happens in the commission every single day.

Senator KOVACIC (New South Wales) (11:48): Is it your view that the ability to vary the existing terms of awards will increase after the passage of this bill?

Senator WATT (Queensland—Minister for the Environment and Water) (11:49): I'm not sure that anyone will have modelled the likely number of applications. But, just as there are today, there will be unions and employer groups in the commission seeking to vary the terms and the conditions of an award, either to raise pay rates, reduce pay rates, add conditions, take away conditions. I'm sure some people will make use of this provision once it's passed.

Senator KOVACIC (New South Wales) (11:49): I'm sure that some people will. I wonder why you didn't model that. Why wouldn't you model to see whether this would create a greater incidence of unions looking to vary existing award terms under the bill?

Senator WATT (Queensland—Minister for the Environment and Water) (11:50): I would expect that we would see this provision used more as a defensive mechanism by unions. If we were to see employer groups make an application to the commission to try to cut penalty rates from an award, this would stop that from happening rather than unions seeking to vary awards to do something regarding penalty rates. It's more, to my mind at least, of a defensive step. As I said, there are literally cases in the commission right now where we're seeing employer groups trying to cut penalty rates from awards. This would prevent that from happening.

Senator KOVACIC (New South Wales) (11:50): So if it's primarily a defensive mechanism then why wasn't there a retrospectivity element written into the bill? I note that Professor Andrew Stewart had specific questions about the drafting of the bill that were left unanswered by the department. So I'd like to get an understanding as to how these decisions were made in relation to both what the impact of the bill would be in not drafting it in a manner that would preclude retrospectivity and when it's said that the Fair Work Commission can deal with it anyway, which then means that the Fair Work Commission has even more work to do. Why wouldn't you model both of those things when there's a significant impact, both on the commission and on existing award terms?

Senator WATT (Queensland—Minister for the Environment and Water) (11:51): We as a government think that people shouldn't have their penalty rates cut. That's why we're making this change and why we're content to see it go forward. You've asked a number of questions about why we are permitting existing terms and awards to be varied. You characterise that as retrospective, because these awards were determined in the past and we're allowing them to be changed. If we stopped awards that might have been decided five or 10 years ago from ever being changed, then people's pay rates and conditions wouldn't change. You don't have awards set in stone forever. They change when parties bring applications to the commission to change those terms. What we're saying here is that, if parties sought to cut penalty rates from those awards, they wouldn't be able to do so.

Senator KOVACIC (New South Wales) (11:52): Respectfully, I'm not talking about not changing pay rates or penalty rates. It's about the existing agreements between employers and employees as to the broader terms of their employment that they have already come to an agreement on, which could be impacted by this legislation. The legislation is effectively saying: 'Bad luck. This applies regardless of an existing agreement that you may have.' I'm trying to understand why consideration wasn't given to that when there are obvious impacts to small business. It's obvious that a small business is going to find that harder to manage than a Coles, a Kmart, a major bank or any other organisation.

Senator WATT (Queensland—Minister for the Environment and Water) (11:53): As I think I've said previously, any agreement that has been reached at an enterprise level—an enterprise bargaining agreement or an individual flexibility agreement—won't be impacted by this bill, because those agreements have been reached between employer and employees, sometimes with the involvement of a union. This is about the award and the minimum standards. I think some of the concern seems to come from a fear that if—there have been cases, we all know them.

Several years ago, the commission reduced penalty rates. I think they made a decision in the retail sector a few years ago to reduce penalty rates. This bill would not automatically change those penalty rates back to where they were. It would require a future application, presumably from a union, to increase penalty rates above the level they are currently set at, whether they've been reduced before or left as they are. So this bill won't overturn, if you like, previous decisions of the commission on its own. It would take a future application from a union to seek to introduce penalty rates. I reckon there's probably unions in the country trying to do that right now, just as, unfortunately, there are some employer groups trying to cut penalty rates right now.

Senator KOVACIC (New South Wales) (11:55): Could you please explain how the bill will treat annualised salary arrangements that are already approved by the commission? Is that in line with your most recent answer?

Senator WATT (Queensland—Minister for the Environment and Water) (11:56): I knew I had a piece of paper somewhere. Your question essentially was: how will the new principle impact annualised wage arrangements? The Fair Work Act permits annualised wage arrangement terms in modern awards at section 139(1)(f). These terms must include safeguards to ensure employees are not disadvantaged. The new principle will apply when the commission is exercising its powers to make, vary or revoke a modern award. It will be up to the commission to determine how the principle is interpreted and applied through its usual consultative process with parties. The government is aware of 22 annualised wage arrangement terms in modern awards.

Senator KOVACIC (New South Wales) (11:56): Going back to your answer in relation to previous attempts to reduce penalty rates, Minister, can you confirm whether that relates to the 2016 matter where there was a union negotiated agreement by the SDA which cut penalty rates, and that the Fair Work Commission actually overturned that? If that was the case, if the Fair Work Commission were capable of overturning this union led decision in 2016, is that a reflection of the powers of section 134 of the act already doing what they were intended to do in relation to penalty rates?

Senator WATT (Queensland—Minister for the Environment and Water) (11:57): I don't remember the exact circumstances of the case you've referred to or the one that I was referring to before. My recollection is that around about that time there was a decision made by the commission to vary the terms of an award to reduce penalty rates as opposed to an agreement. What I'm saying is that that kind of decision would not be possible after this bill is passed. It wouldn't be possible to cut the penalty rates and the award. I'm also saying that this bill won't automatically overturn that kind of past decision. If someone wants to increase penalty rates from their current level, then they have to apply to the commission and vary the award. They had to do that yesterday. They have to do that today. They will have to do that after this bill is passed.

Senator KOVACIC (New South Wales) (11:58): I spoke before about some drafting concerns that Professor Andrew Stewart put to the department. Will the commission be required to test new arrangements against fringe or extreme scenarios, as raised by Professor Stewart? By 'fringe' or 'extreme', I mean someone that only works on public holidays or on Sundays rather than an individual's likely pattern of work.

Senator WATT (Queensland—Minister for the Environment and Water) (11:59): I can't predict exactly how the Fair Work Commission will make future decisions based on this bill, but the usual process that the commission undertakes in an application is to consider all of the evidence that's submitted and reach a fair and reasonable position. I would expect that that's what they'd do in this case as well.

Senator KOVACIC (New South Wales) (11:59): In that case, would you have a view or would you be able to give us some insight into why the department's responses were so general and differential to the commission instead of providing clarity to stakeholders? Why can't the department just tell us what is going to happen here or what the general set of rules are? Why doesn't it just say: 'No. Absolutely not. We're not going to base this on a hypothetical, random scenario of some worker that might just work Sundays or a worker that might just work on public holidays'? Why not provide that clarity?

Senator WATT (Queensland—Minister for the Environment and Water) (12:00): We respect the fact that the Fair Work Commission is independent in the decisions it makes on particular cases. We respect the fact that they have discretion when they make their decisions, and we don't want to overly constrain the Fair Work Commission in terms of what they have to consider and what they can't consider. We're setting a principle for the commission to be governed or guided by, then it's a matter for the commission to interpret the particular facts of a case.

Senator KOVACIC (New South Wales) (12:01): I'm a bit more confused now. Minister, you tell us that this bill is about providing certainty, but you've now just said, in answer to the last couple of questions, that you can't guarantee how the Fair Work Commission will interpret the new provisions of this bill that's meant to provide certainty. Which is it?

Senator WATT (Queensland—Minister for the Environment and Water) (12:01): The bill provides certainty in the sense that it makes clear that penalty rates can't be cut in awards after this is passed. The parliament doesn't ever seek to tell the commission what it must decide on every single case. That's the point of the commission: to weigh up the evidence and apply its discretion.

I remember having a long debate with Senator Cash along similar lines with one of the workplace relations bills that we passed last term, where my answer to many of her questions was, 'It's a matter for the commission.' I'm not sure if she thought that was laughable or horrific; it was her usual mock horror that we're seeing again this week. But that's how it works. The commission has discretion to make decisions. What we're doing here is setting the principle that the commission needs to consider.

Senator KOVACIC (New South Wales) (12:02): Understand that that's the function of the commission and that their purpose or job is to weigh up evidence and apply discretion. But how are they going to be able to do that now based on this legislation, because this has now become prescriptive? It actually can't say, 'Weighing up the balance of things, this is fair and reasonable.' They're actually being told, 'We actually have to do this.'

Senator WATT (Queensland—Minister for the Environment and Water) (12:02): I think this part of the discussion stems from you putting forward the situation where I think what you called 'fringe cases' might be provided to the commission. What I'm saying is that the commission, when making its decision, will consider all of the evidence and will come up with a fair and reasonable decision. But, yes, we are seeking to tell the commission in this bill that it can't cut penalty rates from a modern award—just as I'm sure I could find you a couple of hundred other sections in the Fair Work Act which give the commission direction about what it can and can't do, but then they operate within those boundaries to consider the facts of a particular case to make a decision.

Senator KOVACIC (New South Wales) (12:03): Do you consider the wages for employees of small businesses to be fringe issues?

Senator WATT (Queensland—Minister for the Environment and Water) (12:03): I absolutely do not consider the wages earned by employees of small businesses to be fringe issues. I think they're really important issues, and

that is why am proud to be part of a Labor government that is increasingly wages of workers in small businesses and big businesses after 10 years of wage suppression by the coalition.

Senator KOVACIC (New South Wales) (12:04): I'm very proud to be a part of the Liberal Party that wants to ensure that small businesses remain in existence so that they can continue to employ Australian workers and that those workers can have the flexibility of choice of working for local Australian small businesses rather than being pushed to institutional and large corporations.

Minister, can you please tell me why we're proceeding with this legislation right now, when there are fundamental questions about its implementation still unresolved? I speak to the impacts on small business, I speak to retrospectivity, and I speak to ambiguity in the language and unintended consequences. Why don't we just take some time to ensure that we don't have those problems, given that nothing is actually going to change today or tomorrow, as you state?

Senator WATT (Queensland—Minister for the Environment and Water) (12:05): The reason we're doing this, Senator Kovacic, is that we don't want to see people lose their penalty rates. That is literally under threat right now in two separate cases before the Fair Work Commission. Even if it weren't for the fact that those cases are before the Fair Work Commission now, this is about putting in place a broad principle that applies forever, whether it be to those couple of cases or more generally into the future. We don't want to see penalty rates cut, and that's why we're seeking to pass this bill.

Senator KOVACIC (New South Wales) (12:05): What I want to get an understanding of is how the government justifies removing the ability for employees to agree to higher base salaries in lieu of penalty rates, when these arrangements provide income stability? I'll use another example. Many major lenders in this country, when they assess borrowing capacity for a home loan, will assess penalty rates and overtime rates as a lower percentage because of the variation, or the instability, of those hours. Why shouldn't an employee be able to negotiate, with their employer, a higher flat rate that, on measure, they are delivered a higher base salary on, to provide them with that income stability? Why can't they choose to do that?

Senator WATT (Queensland—Minister for the Environment and Water) (12:06): As I said earlier, we're entirely comfortable with workers and their employers reaching agreements about their pay and conditions, and that is what the enterprise bargaining system operates for. But we don't think it's appropriate that the minimum conditions that are set in an award should allow for penalty rates to be cut.

Senator KOVACIC (New South Wales) (12:07): Minister, could you please tell me what consideration, if any, was given to evidence from women who faced significant difficulties with Centrelink and child support due to variable penalty rate income. To clarify that, what consideration was given to the fact that some women may choose to have a flat rate income that suits them better for those purposes in relation to reporting of income to government agencies?

Senator WATT (Queensland—Minister for the Environment and Water) (12:08): I think my answer is the same in that the ability for those women to reach those kinds of agreements will remain in place after this bill is passed. They will still have the ability to negotiate and be part of an enterprise bargaining agreement, just as they do now.

More generally, the bill would have a positive impact for women, who make up the majority of award-reliant employees; nearly 60 per cent of award based employees are women. This would protect their penalty rates. Women are also overrepresented in part-time work, as workers with care responsibilities and in industries where enterprise bargaining agreements are less common. So, by ensuring the penalty and overtime rates in modern awards are not reduced in the future, this bill helps protect take-home pay for these women—but, as I say, they would continue to have the ability to reach agreements, just as they do now.

Senator KOVACIC (New South Wales) (12:09): Thank you, Minister. My concern is in relation to how it'll be assessed. It won't necessarily be assessed on their own individual circumstances. What I'm trying to understand is why an employee like the one that I've just described should be denied the arrangement that they prefer, that suits them, that suits their family and that also suits their employer, simply because a hypothetical worker somewhere else might be worse off in a hypothetical scenario. I'm interested in understanding why the needs of a real worker are being overlooked for the needs of a hypothetical potential worker.

Senator WATT (Queensland—Minister for the Environment and Water) (12:10): I am reminded that, in addition to enterprise bargaining agreements being available for women in that situation, I said earlier that this bill won't have any impact on individual flexibility agreements. There still are opportunities for women in that situation to reach agreements with their employers. What won't be possible is for an employer to say to a woman in the instances you are talking about, 'You're going to be paid the award, and that means you won't get penalty rates, because the award doesn't allow for penalty rates any longer.' That's what will be stopped.

Senator KOVACIC (New South Wales) (12:10): I think the question that I'm thinking about here is in relation to EBAs and IFAs, which is a different matter and relates more to larger organisations, but I will come back to that later. My concern in relation to this is that this government states that it supports flexibility. There are many people now, as we saw during the election period, talking about the importance of workplace flexibility, in particular working from home, and of negotiating those terms with their employers. My concern is how this bill, which becomes incredibly proscriptive in relation to certain elements, aligns with the government's stated support of workplace flexibility, particularly as it comes to an employee and employer being able to come to a mutual agreement.

Senator WATT (Queensland—Minister for the Environment and Water) (12:12): This bill still allows an enormous amount of flexibility when it comes to workplace arrangements. What it stops is people having their penalty rates cut without adequate compensation for that. Parties can still seek exemption rates in an award, which would take into account the loss of penalty rates, but they need to be properly compensated for that. It's about not cutting penalty rates and leaving people worse off.

Senator KOVACIC (New South Wales) (12:12): Does that exemption rate calculation apply to that individual employee or to hypothetical potential employees or hypothetical scenarios?

Senator WATT (Queensland—Minister for the Environment and Water) (12:12): As I understand it, those exemption rates would need to operate in a way that didn't leave any employee worse off.

Senator KOVACIC (New South Wales) (12:13): Effectively, even though that individual employee had negotiated that agreement with their employer and is better off happy with that arrangement, under the terms of this bill, they would not be able to continue in that arrangement if some other worker somewhere would have been worse off under that same arrangement.

Senator WATT (Queensland—Minister for the Environment and Water) (12:13): I think the most likely scenario where what you have put forward would occur could be dealt with through an individual flexibility agreement, where an individual employee reaches an agreement with their employer and they can negotiate the terms and conditions that suit them, within the boundaries of the legislation, obviously.

Senator KOVACIC (New South Wales) (12:14): Minister, do you acknowledge that IFAs are acknowledged for their fragility and are not perhaps a best-practice measure for agreements between employers and employees?

Senator WATT (Queensland—Minister for the Environment and Water) (12:14): Personally, I am a fan of enterprise level bargaining and collective agreements, but there are other arrangements possible under the act.

Senator KOVACIC (New South Wales) (12:14): So, to be clear, the only option for that employee—and that that scenario is suitable for them and best for them—is to enter into an EBA or an IFA? They cannot remain in that agreement even though they are better off under it?

The CHAIR: Minister, it being 12.15, we'll have to take this up at another time.

Senator Watt: I look forward to it!

Progress reported.

The DEPUTY PRESIDENT: We will now move to senators' statements.

STATEMENTS BY SENATORS

Tasmania: Critical and Strategic Minerals Industry

Senator DOWLING (Tasmania) (12:15): A couple of weeks ago I stood with my colleagues from the Tasmanian and Commonwealth governments to announce a $135 million support package for Nyrstar smelters in Hobart and Port Pirie. Let me be clear, this was not charity or a handout to a failing business; this was an investment in our people, in our sovereign capability and in the regions that built this nation.

Make no mistake, the scale of what was at risk was enormous. In Port Pirie, the lead smelter is the backbone of the town. More than 850 South Australians are directly employed there, and hundreds more rely on it through contracting and supply work. In my hometown of Hobart, the zinc refinery employs over 550 Tasmanians. If you add in suppliers, contractors and small businesses, you reach more than 6½ thousand jobs tied to these operations nationwide. If either smelter closed, it would not just have been a hit to the economy; it would have been a catastrophe for those towns—families broken, businesses shuttered, communities hollowed out. That is why we acted, because walking away was never an option.

In this partnership, the federal government will contribute $57.5 million, the South Australian government will contribute $55 million and the Tasmanian government will contribute $22.5 million. Each level of government is stepping up, each recognising the national importance of these facilities. What will it deliver? First, it will bring forward critical maintenance; infrastructure upgrades to furnaces, wharves and safety systems; modernisation to