



PO Box 463
Canberra ACT 2601
Our advocacy team is based in Canberra
Email: info@cosboa.org.au
www.cosboa.org.au

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Submission to the Inquiry into the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025

Executive Summary

The Council of Small Business Organisations of Australia (COSBOA) welcomes the opportunity to make a submission to the Standing Committee in Education and Employment on the proposed Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025.

COSBOA is the national peak body representing the interests of small businesses across Australia. Our membership includes industry associations representing small business owners. We advocate for policies that support a vibrant, diverse and sustainable small business sector, which collectively employs over 4.5 million Australians and contributes approximately 35% to Australia's GDP.

The **Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025** seeks to amend the Fair Work Act 2009 by adding requirements that the Fair Work Commission (FWC) must not reduce penalty and overtime rates in modern awards, nor approve any terms that would substitute or bundle these entitlements in a way that diminishes workers' pay. While the Bill is presented as a measure to protect vulnerable workers, this submission outlines how the proposed legislation will negatively impact small businesses, reduce workplace flexibility, and undermine the Fair Work Commission's role as an independent industrial umpire.

1. Overview of the Proposed Legislation

- a) The Bill introduces a new principle (section 135A) requiring the Fair Work Commission to ensure penalty rates and overtime cannot be reduced or substituted in modern awards in a way that leaves workers worse off.
- b) The Bill was initiated to prevent approaches such as "rolled up" pay, where penalty and overtime rates are included in a flat salary, often favoured by businesses and employees for administrative simplicity and flexibility.
- c) The changes appear to target applications by employer groups to the FWC for more flexible pay arrangements, aiming to "close loopholes" that the government claims risk eroding award safety nets.

2. Negative Impacts on Small Business

a) Reduced Flexibility and Increased Complexity

- i. Small businesses rely on award flexibility—like annualised salaries or "rolled up rates"—to manage unpredictable rostering, ensure compliance with complex award



requirements, and reduce burdensome red tape. The Bill makes these arrangements far less viable, increasing both payroll complexity and compliance costs for small operators.

- ii. Modern awards are already intricate and complex, with over 121 different awards governing pay rates, penalty entitlements, and conditions. Removing the discretion of the independent umpire to tailor awards to changing business environments will increase the risk of non-compliance among small businesses that lack specialised HR resources.

b) Increased Labour Costs

- i. Locking in penalty and overtime rates at inflexible levels will directly increase costs for small businesses operating in sectors with irregular trading hours (retail, hospitality, health, care, and emergency services). Many of these businesses already face tight margins and rising costs for energy, rent, and inputs.
- ii. The government estimates the Bill will impact 2.6 million workers but does not quantify the additional annual wage cost imposed on small businesses, who comprise most employers in the most affected sectors.
- iii. Self-evidently, small businesses hire fewer workers when labour costs rise and importantly, they lack the ability to absorb higher costs like large corporations which accelerates continuing market consolidation toward big businesses.

c) Inhibited Innovation and Enterprise Bargaining

- i. Engagement in the Enterprise agreements process amongst small businesses is low. Small Businesses lack sophisticated expertise of HR resources and employment specialist to undertake bargaining for enterprise agreements and necessarily rely on Awards for this purpose.
- ii. Individual flexibility arrangements (IFAs) represent one way for an individual to arrange with an employer or vice versa a tailoring of pay to business needs while maintaining the award “safety net.” We are pleased the proposed bill still allows for these arrangements to continue albeit on an individual basis. However, by making award flexibility more difficult and prescriptive, the Bill undermines bargaining and innovation in employment practices across industry sectors.
- iii. Further there is no differentiation between small and large employers in the bill, despite having contrasting capacities for compliance and negotiation.

d) Disproportionate Burden Relative to Large Employers

- i. Large businesses have specialist teams/legal support to navigate compliance. Small business owners must often handle compliance directly. The operational and financial burden of this legislation falls disproportionately on small enterprises.



3. Undermining the Fair Work Commission as Independent Umpire

The **Bill effectively removes the FWC's ability to exercise independent, evidence-based adjustment of awards**, including the ability to respond to changing economic circumstances, consumer behaviour, or sector-specific needs:

- a) **FWC's existing role:** The FWC was established as the independent "umpire" tasked with managing industrial awards, balancing the interests of employees, businesses, and the economy, including making evidence-based adjustments to award terms and penalty rates.
- b) **Removal of discretion:** By mandating the preservation of penalty and overtime rates regardless of circumstance, the legislation restricts the FWC's statutory independence, converting it into an enforcer of government-set rules rather than a neutral, evidence-based decision-maker.
- c) **Political intervention:** The Bill sets a precedent for Government (of any political persuasion) to override the FWC whenever it disagrees with its decisions or potential impending ones, eroding business confidence in the objectivity and fairness of Australia's industrial relations system.

4. COSBOA Recommendations

- a) **Retain FWC Discretion:** The Bill should not preclude the FWC from conducting rigorous, independent assessments of award terms, including penalty and overtime rates. Its evidence-based approach should be preserved.
- b) **Small Business Carve-Out:** Consider explicit carve-outs or phased implementation for small businesses up to 50 full time equivalents employees to avoid disproportionate compliance costs and operational disruption.
- c) **Improve Consultation Mechanisms:** Ensure proper consultation with small business groups before implementing major changes to award systems or pay settings to avoid unintended consequences and increase policy effectiveness.

5. Conclusion

The Council of Small Business Organisations of Australia urges the Inquiry to **reject the Bill in its current form**. While protecting vulnerable workers is a worthy goal, legislating inflexible penalty and overtime rates and removing the role of the Fair Work Commission as an independent umpire will do disproportionate harm to small businesses, reduce flexibility that is essential for their survival, and ultimately threaten jobs and innovation. A balanced approach that protects both workers and employers, maintains the independence of the FWC, and recognises the unique challenges facing small business must be pursued.

Mike Sommerton

Head Industrial Relations

On behalf of the Council of Small Business Organisations of Australia



References:

1. https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2526/26bd002
2. <https://ministers.dewr.gov.au/anthony-albanese/government-moves-enshrine-penalty-rates-protection>
3. <https://ministers.dewr.gov.au/rishworth/protecting-penalty-rates-top-government-priority-parliament-resumes>
4. https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7335
5. <https://www.fairwork.gov.au/pay-and-wages/penalty-rates-allowances-and-other-payments/penalty-rates>
6. <https://www.fwc.gov.au/loaded-rates-pay>
7. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/PenaltyRates48
8. <https://www.fairwork.gov.au/taxonomy/term/337>
9. <https://www.fairwork.gov.au/pay-and-wages/allowances-penalty-rates-and-other-penalties>
10. <https://www.fwc.gov.au/work-conditions>