



8 August 2025

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Chair

**Re: Submission to the Senate Standing Committee on Education and Employment on the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025**

Thank you for the opportunity to provide a submission to the Inquiry into the provisions of the *Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 (the Bill)*.

### **Australian Services Union**

The Australian Services Union (ASU) is one of Australia's largest unions, representing more than 135,000 members across local government, community and disability services, public services, airlines, call centres and administration workers all around the country.

The ASU exists to defend and advance the rights of our members. By acting together, workers in the industries and occupations we represent are in the very best position to protect their rights at work and to achieve better wages and conditions.

### **Introduction**

The ASU makes the submissions outlined herein, in support of the passage of the Bill. The ASU also recommends an amendment to the *Fair Work Regulations 2009 (FW Regulations)*.

The ASU also supports the submissions made by the Australian Council of Trade Unions.

The reality is that if penalty and overtime rates could ever be removed, then many ASU members will experience financial hardship and need to look for new employment. These are workers in our call centres, hospitals and service industries. Penalty and overtime rates offer far reaching benefits, and this is why we support the proposed legislation.

## Importance of Penalty and Overtime rates

Penalty and overtime rates have long been a feature of Australia's industrial relations system, as a way of compensating workers for working unsociable hours such as late nights, weekends and public holidays.

Working unsociable hours has an impact on families, communities and limits an individual's lifestyle and goals. Even in today's modern society, penalty and overtime rates are necessary to compensate workers for sacrificing their time so that companies and other services can continue to operate.

This view is reflected in the modern awards objective, provided for in s.134(1)(da) of the *Fair Work Act 2009* (Cth) (the FW Act), that there is a "need to provide additional remuneration" for "overtime", "unsocial, irregular or unpredictable hours", "weekends or public holidays" or "shifts" (emphasis added).

As identified below, ASU members rely upon this additional remuneration not just for compensation for working unsociable hours, but also as a trade-off mechanism to meet their living expenses. The cost of living has stung low paid workers, and penalty and overtime rates are necessary for them to try to remain financially stable. Without such remuneration, workers will never be able to meet increasing cost of living expenses, nor will they be able to save for a home or have a holiday.

The importance of penalty and overtime rates cannot be overstated.

Some ASU members have told us:

*"I am a shift worker and heavily rely on penalty rates. If they were taking away, the job wouldn't be worth doing."*

### ***Female worker in the water industry in Queensland***

*"As a call centre the work volume can be irregular and unpredictable...We don't have a lot of overtime but appreciate the fact we have to work on public holidays and need to be compensated for the fact we miss out spending time with our families."*

### ***Female call centre worker in Queensland***

*"Currently I work weekends as in some instances depend on those penalty rates to go toward rent, utilities, clothing, food for the family. If these were taken away I would have no incentive to work my weekends and I would go back to a weekday roster."*

### ***Female call centre worker in Queensland***

*"I live solely on penalty rates. With the current cost of living crisis, it is very hard to live, not survive, with my base salary. As a refugee, it is very important to me to get a good pay since I took out a huge loan just to settle myself in this county to be safe. I cannot fathom my work without Penalty Rates. It is what keeping me going to work and do my best. Without it, I will not be motivated to go to work at all."*

### ***Male call centre worker in Queensland***

## The fight for Penalty and Overtime rates in the Fair Work Commission

The ASU is currently defending two applications in the Fair Work Commission, made by employer representatives, to remove penalty and overtime rates from the *Clerks – Private Sector Award 2020 (the Award)* and this is relevant to the Bill and the Inquiry.

Separately, each Australian Business Industrial and NSW Business Chamber (AM2023/31) and the Australian Industry Group (AM2024/32) made applications to vary the Award to introduce so-called exemption rates. The exemption rates have the effect of removing penalty and overtime rates, and would be a type of term that could be captured by proposed s.135A(1)(b) of the Bill.

The [AIG's proposal](#) is that an employer need only pay 125% of the weekly rate so that the employee is not entitled to various Award conditions, such as rostering, breaks, allowances, but particularly overtime rates and penalty rates.

[ABI and NSW Business Chamber's](#) proposal is for a 155% exemption rate, for up to 50 hours per week so that the employee is not entitled to Penalty and Overtime rates.

Each employer group cites 'compliance' issues as a reason for the exemption rates. That is, that employers have difficulty complying with the terms of the Award because employers struggle with requiring employees to record their time worked. Pursuant to s.535 of the FW Act and Reg 3.34 of the FW Regulations, employers must keep time and wages records when they must pay penalty and overtime rates. Each application, if successful, has the effect of dispensing with time and record compliance because there would be no requirement to pay penalty or overtime rates.

ABI and NSW Business Chamber's proposal and AIG's proposal may appear attractive on their face, but if there is no requirement to record hours of work, the proposals essentially allow workers to work an uncapped number of hours, or late at night, or on weekends or public holidays, without additional remuneration. The ABI and NSW Business Chamber's proposal to cap work at 50 hours a week is rendered entirely otiose if there is no record of when 50 hours are worked.

Time and wages records are essential to ensuring workers are not ripped off their entitlements to penalty and overtime rates.

Despite the introduction of the Bill, and what the ASU considers would fall within the prohibition of proposed s.135A(1)(b) of the Bill, neither application has been withdrawn. The ASU is concerned that the Bill, as drafted, does not adequately discourage these types of claims by employer groups, nor provide a complete answer to the protection of penalty and overtime rates which are so important, especially in light of the existing mechanisms found in the FW Act to achieve flexibility around penalty and overtime rates.<sup>1</sup>

## Concerns from members about losing penalty and overtime rates

The ASU recently surveyed its members and workers employed in the Clerical industry. Members largely reported concerns about the idea of losing penalty and overtime rates. Some of the themes include:

- That losing penalty and overtime rates would impact their financial situation negatively

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<sup>1</sup> For example, the annualised wage arrangements in clause 18 of the Award, the individual flexibility arrangement found in clause 5 of the Award, or the guarantee of annual earnings in s.328 of the FW Act, or through enterprise bargaining.

- Some would have to reconsider their employment
- That the compensation from penalty and overtime rates makes time away from family and community worthwhile

Some of their direct quotes:

*“...These changes would have a significant negative impact on my financial stability, well-being, and motivation. Overtime and penalty rates are important for compensating time worked beyond standard hours, and their removal would mean I’m doing more work for less pay. ...I’m particularly concerned about the erosion of fair work conditions. These kinds of changes shift more burden onto employees without fair compensation. It also opens the door for unpredictable schedules, financial insecurity, and a lack of respect for personal time. When work conditions become unstable or unfair, morale and job satisfaction suffer, which affects performance and retention in the long term. ...That said, occasionally working extended or non-business hours is acceptable, as long as the time is voluntary, reasonable, and properly compensated. Flexibility works both ways, and fair pay for additional time helps maintain mutual respect and motivation.”*

**Male worker in the water industry in Queensland**

*“I would have to resign. I need to be able to look after my family”*

**Male worker in the Queensland health system**

*“...The cancellation of overtime and removal of penalty rates would also have a significant financial impact, which is unconscionable in a cost of living crisis, and erode the recently enshrined 'right to disconnect'. I am voluntarily on call for a fortnight every two months. As part of this arrangement, I am compensated a daily rate which I consider a fair recompense for the impact on my right to disconnect, and impact to my personal life being on call required. If my employer was able to force me to accept these conditions without compensation it would be exploitation and a significant step backwards for workers rights.”*

**Female worker in the water industry in Queensland**

*“As a shift worker, I already work odd hours and some are from home. Penalty rates is what makes my job a well paid job, it would not be worth doing it if I didn't get penalty rates. If there were cancellations of overtime, they wouldn't have anyone to do the responsive job that I do.”*

**Female worker in the water industry in Queensland**

*“I expect to be paid fairly for the work I do. I don't think I should be required to work for free, or to work long hours (overtime) for standard rates. I need down time, and I have interests and community commitments outside of work that I want to maintain. Who would do those things if I had to work all hours.”*

**Female worker in the water industry in Queensland**

*“...Penalty rates are the only way I can survive without them I'll need a second job. I already work full time with weekends. I'm happy to work outside my normal hours if it means I stay working from home.”*

**Female call centre worker in NSW**

*".. The full time staff are given rosters a week or two out and this sometimes can include very early or very late shifts. Penalty rates are one of the reasons I can afford to live in Sydney, as I currently get 15% afternoon loading on weekdays and 50% loading on weekends."*

***Female call centre worker working in ACT***

*"Overtime is a staple to ensure we have a comfortable life... Concerns would be the ability to service our mortgage and enjoy meals out and holidays. [I have] Been working shift work for 30 years - only have 1 weekend off in 3."*

***Female call centre worker in NSW***

**Recommendations**

The ASU recommends:

1. that the Bill be passed as quickly as possible to protect penalty and overtime rates; and
2. that Regulation 3.34 be amended to include reference to a type of rate referred to in s.135A(1)(b), such as:

*For subsection 535(1) of the Act, if a penalty rate or loading (however described) must be paid for overtime hours actually worked by an employee, or would be paid but for the operation of a term that substitutes employee entitlements to a penalty rate or loading (however described), a kind of employee record that the employer must make and keep is a record that specifies:*

Thank you for consideration of our submission.

Should the Committee have any queries in relation to this submission, please don't hesitate to contact me or Kelly Thomas

Yours faithfully

Emeline Gaske  
**NATIONAL SECRETARY**