SENATE INQUIRY

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

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National Secretary-Treasurer

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About the SDA

The Shop, Distributive and Allied Employees' Association (the SDA) is one of Australia's largest trade unions with almost **200,000** members. Our members work in retail, warehousing, fast food, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%), under 35 years (57%), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a long history of advocating on behalf of members. We do this through enterprise bargaining; making submissions regarding Awards and the NES to provide a relevant safety net; and through numerous submissions made to parliamentary and government inquiries and other important reviews.

The SDA has 10 policy principles that guide our engagement in these reviews.

For a list of these, see Appendix A.

Introduction

The SDA welcomes the proposed legislation that has been introduced in the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 which aims to further strengthen and improve the provisions in the Fair Work Act.

Such strengthening is of great benefit to members of the SDA. It will provide real protections that will make a concrete difference to their work life.

The proposal is a step to redress the balance of power in workplaces so that the safety net of award conditions can be protected for workers. Such protection is vitally important to young workers and women who are at times at greater exposure to erosion of their working conditions.

Penalty rates and overtime are key components of earnings which workers rely on.

> 'Like everyone else, struggling to survive the cost of living. I work 3 Sundays a month, only because it's penalty rates so at least my pay is a little bit higher..' *Female, 46-55, Supermarkets, SA:*

The SDA supports the ACTU submission that has been filed in this Senate Inquiry.

Penalty Rates are important for workers

There should be little doubt that workers in areas covered by the SDA depend on penalty rates in order to supplement the low wages they receive.

Our members in a recent survey about cost of living and wages provided clear and direct comments about their experience in the current climate.

> 'My wages does not cover my household bills, therefore I have to work on a Sunday so I can get penalty rates to boost my wages a little' *Female, 55+, Fuel Retailing WA*

> 'The fact that being full time in retail the only reason I keep a roof over my head is due to my Sunday penalty rates' *Male, 36-45, Department store, WA*

> 'With out a pay rise or penalty rates my full time wage would not be enough to live off' *Male, 36-45, Coles Supermarkets, QLD*

Supplementation when on low wages is important, but penalties also provide the recognition for working at unsociable times and missing family time. Such sacrifices need to be recognised and appreciated.

> 'Surviving on part time wages makes it very difficult to make ends meet...I'm really grateful and thank God for penalty rates....please don't take those away....this compensates for not spending time with the family....' *Female, 55+, Department Store, NSW*

> ' I am a university student who usually cannot work during the week. Penalty rates for working on the weekend are the only reason I can support myself financially during the week.' Male, 18-25, Specialty Retailer, VIC

'I'm really struggling and rely heavy on penalty rates, I a few health challenges but I'm trying to work as much as I can. I have never struggled as much as I am now. The cost of food and rent is ridiculous and lack of rental homes available is also a problem. Wages being cut and penalty rates going would cripple me and the people I work with. It breaks my heart that a government would think we are unworthy of a pay rise or penalty rates, that we are very much beneath them.' *Female, 46-55, Supermarkets, NSW*

Providing certainty to workers is an important component of the proposed legislation. Pressures they are facing are continuing. This legislation will reduce their anxiety and concerns over the risk of losing penalty rates.

' I'm a permanent part time worker and I very rarely get extra hours. A pay increase is important to me so I can keep up with the rising costs of my bills and food for my family. Wages need to increase and penalty rates need to stay.' Female, 36-45, Supermarkets, QLD

What happens when penalty rates are reduced

Members of the SDA were subjected to a penalty rate cut when the Fair Work Commission (**FWC**) decided to reduce Sunday penalty rates and public holiday rates in two awards that many had their work conditions set by.

The General Retail Industry Award and the Fast Food Industry Award both had the penalty rate reductions applied from 2017.

The FWC thought there was some possibility that such a reduction could have a positive increase in employment. There was acknowledgement that the reduction would impact individual workers financially.[1]

Following this decision and the reduction in penalty rates some research was conducted to explore the employment effect.

Three papers were published from this research:

1. O'Brien, M., Markey, R., & Pol, E. (2018). The short run impact of penalty rate cuts on employment outcomes in retail and hospitality sectors in Australia. *Economic Papers: A journal of applied economics and policy*, *37*(3), 270-286.
2. O'Brien, M., & Markey, R. (2020). Labour regulation reform and sectoral employment outcomes: a case study of public holiday penalty rate reductions in Australia. *Applied Economics Letters*, *27*(7), 559-563.
3. Markey, R., & O'Brien, M. (2021). Analysing the employment impact of Sunday wage premiums reductions: Implications for minimum wage research. *Journal of Industrial Relations*, *63*(5), 728-752.

The first paper was after the first penalty rate cut and compared outcomes from June 2017 with July. Employees were surveyed and had a sample size of 1351 respondents (860 retail and 491 hospitality). The finding was that there was no evidence to suggest any improvement to employment outcomes for those affected by the penalty rate cuts.

[1] (2017) 265 IR 1.

The second and third papers were from the ACTU/SDA/UOW funded project. The second paper was focussed on employment on public holidays and the third paper was focussed on Sundays. The data here encompassed an employee survey (sample size 1828) and an employer survey (sample size 236) and three key time periods 2016-17 (pre-penalty rate change), 2017-18 (first cut) and post 2018 (second cut). Similar measures as the first study from an employee's perspective were used, but also it added insights regarding the number of Sundays/public holidays businesses were open, total employment in the business and owner-manager working patterns from the employer survey. Again, these found no evidence to improvement in employment outcomes.

The papers found:

> "*Ultimately, we failed to establish any evidence for positive public holiday employment outcomes emanating from the penalty rate reduction*." *Paper 2*

> "*We demonstrate conclusively that the phasing in of wage premium (penalty rate) reductions from 2017 did not impact positively on employment in Retail and Hospitality sectors. As such, our findings are consistent with the new minimum wage literature. Results are uniform for all of our employee survey measures: the prevalence of Sunday employment, average Sunday hours worked for those employed on Sundays, average weekly hours and wages. Similarly, findings from the employer survey strengthened these findings when we were neither able to establish any statistically significant improvements to the percentage of Sundays open nor the average hours open on Sundays in either Retail or Hospitality Award-reliant businesses compared to those using enterprise agreements…. Results were also triangulated by consideration of the official ABS data for 2016–2018, showing no notable increase in net aggregate employment or average weekly hours for either Retail or Hospitality sectors." Paper 3*

These studies provided a real time analysis of supposed benefits a community could expect when a penalty rate was reduced. The benefit of increased employment as claimed during the case in the FWC did not eventuate. The only outcome was individual workers had their income reduced.

Conclusion

This proposed legislation is a positive and necessary step that will give protection to the award safety net in that penalty rates cannot disappear from under workers feet. This legislation will prevent reductions being imposed on workers.

It will also provide a level of certainty and comfort to workers, especially young workers and women who are relying on penalty rates. It cannot be underestimated the relief this will provide workers in knowing that the income from penalty rates will be protected.

Appendix A: Rationale for SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a broken industrial framework. We seek an economic system that supports, protects and advances the interests of working people in this country.

Our predecessors built the conciliation and arbitration system which provided the foundations to our nations prosperity over a century ago, it is now our responsibility to build a system for the next generation.

Since the introduction of the Fair Work Act 2009 and subsequent radical changes to the financial and digital context inequality has grown and economic and political power has concentrated in the hands of a few.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will withstand the emerging world of work.

We engage in topics that help us drive this agenda and are guided by ten principles that we believe will create value for our members. Those principles are:

1. **Address Inequality & Enshrine Fairness**
   Minimum expectations must be set and adhered to.

2. **Equity & Empowerment**
   All workers must be supported to progress so that no-one is left behind.

3. **Mobility & Security**
   A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.

4. **Delivering Prosperity & Growth For All**
   A foundation for prosperity and economic growth must be achieved.

5. **Protection in Work & Beyond**
   Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.

6. **Workers Capital & Superannuation**
   Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.

7. **A Strong Independent Umpire**
   A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.

8. **Protection & Support for Our Future**
   Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.

9. **Work & Community**
   Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.

10. **Institutional Support for Collective Agents**
    Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

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