

Senator Marielle Smith
Chair, Senate Standing Committee of Education and Employment

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Dear Senator,

Re: Fair Work Act Amendment (Protecting Penalty and Overtime Rates) Bill 2025 (Cth)

Thank you for the opportunity to provide a submission to the Senate Standing Committee of Education and Employment inquiry on the Fair Work Act Amendment Protecting Penalty and Overtime Rates Bill 2025 (the Bill).

Clubs Australia represents over 5,000 not-for-profit licensed clubs across the country that employ more than 140,000 people.

Clubs Australia supports the objective of the Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025 to safeguard worker entitlements and stop the use of exploitative pay structures. However, we seek clarity that the current drafting of Section 135A will not inadvertently capture legitimate, long-standing pay arrangements that provide fair and stable remuneration to thousands of workers across Australia's registered clubs.

Managers of licensed clubs have beneficial salary exemption arrangements under Clause 18.4 of the Registered and Licensed Clubs Award 2020. These arrangements have operated transparently for over a decade, have not been subject to industrial disputes, and deliver above-award outcomes for workers.

We propose targeted amendments to provide certainty for employers and workers while preserving the Bill's intent. This includes protecting existing Fair Work Commission-endorsed award provisions that demonstrably benefit workers.

For further information, please contact Nicola Shaw 



The Club Industry: A Vital Community Employer

Clubs Australia represents community assets including RSL, sporting, and community clubs, that provide essential services and are significant employers for over 140,000 Australians. Clubs are crucial for local employment, especially in regional areas. Despite these challenges, clubs maintain a strong industrial relations record, paying staff above award rates and offering stable jobs.

The Risk of Unintended Consequences- Section 135A

Clause 18.4 of the Registered and Licensed Clubs Award 2020 contains long-standing salary exemption provisions that are designed to provide above-award pay and operational flexibility. These arrangements were developed through the award modernisation process and have never been challenged by unions or the Fair Work Commission.

The current drafting of proposed section 135A may inadvertently capture and potentially invalidate these exemption provisions.

We are seeking tighter wording in the Bill to ensure that it only applies to new roll-up arrangements or pay structures that reduce existing penalty or overtime rates—not long-standing, above-award provisions that benefit workers.

- **Clause 18.4(a) – Managerial Salary Arrangements:** This clause allows managerial staff to be paid a salary at least 20% above the minimum award rate in exchange for an exemption from certain award conditions. A 2025 Clubs Australia survey found that 86% of clubs rely on this clause to employ managers.
- **Clause 18.4(b) – Maintenance and Horticulture Employees:** This clause requires a 33% salary premium and includes important safeguards. Our survey found that 31% of all responding clubs reported using this clause — a figure that indicates most clubs do not directly employ maintenance or horticulture staff or at all. Among clubs that do directly employ M&H staff, the usage rate is likely to be substantially higher, underlining the importance of retaining this long-standing, Fair Work-endorsed provision.

The most common reason clubs cited for using these provisions was operational flexibility (42%), which enables them to offer consistent rosters, provide greater role stability, and better align staffing with member needs. This flexibility supports employee retention and ensures clubs can continue delivering the quality of service that members expect — particularly in regional areas where staffing pools are limited and recruitment is difficult. *(Note: Other factors, such as compliance certainty and awareness, were also mentioned, but operational flexibility was by far the most important driver.)*

The practical consequences of repealing these award mechanisms are clear. When clubs were asked how they would respond if these exemptions were removed:

- Only 21% said they could afford to revert to minimum award rates with penalties and overtime.



- 55% indicated they would need to use other mechanisms, such as such as Individual Flexibility Arrangements (IFAs) or other contractual arrangements.

Industry Impact if Exemption Rates Are Removed

If the Bill does in fact make these exemption rates vulnerable to being removed, this would disadvantage clubs and their workers. Most clubs rely on these provisions for their operational stability, with a majority (86%) of clubs in Australia using them for their manager remuneration rates arrangements alone.

Withdrawing these long-standing provisions would lead to the following impacts:

- Administrative burden to revise employment arrangements across the sector.
- Potential wage reductions for managers moved to base award rates.
- Undermining of mutually agreed salary structures that have benefited both employers and employees.
- Increased compliance risks for clubs without alternative offsetting contracts.

Supporting the Government’s Intent and Policy Alignment

Clubs Australia understands and fully supports the Government’s goal of stopping exploitative salary practices that disadvantage workers. However, for the legislation to work as intended and avoid unforeseen negative impacts, it must clearly differentiate between problematic 'roll-ups'—where employers disguise reductions in total compensation without genuine employee choice—and genuine, award-based exemptions, which provide above-award pay, are entered into voluntarily, and have received longstanding industrial endorsement.

Good public policy should reinforce, not displace, industrial settings that are working well. Exemption clauses like 18.4(a) and (b) were developed through rigorous Fair Work processes and demonstrably align with broader government efforts to protect workers while ensuring industrial flexibility.

The Bill, in its current form, risks these provisions. The Fair Work Commission-endorsed arrangements such as Clause 18.4 of the Award is consistent with the Government’s commitment to “drive growth, improve competition, lift productivity and create the next generation of prosperity and opportunity.”

Clubs Australia Recommendations

To preserve these longstanding arrangements, Clubs Australia proposes:

Recommendation 1: Amend proposed section 135A to Exclude Existing, Above-Award Provisions.

To ensure the Bill applies only to new or exploitative roll-up arrangements and not to legitimate, long-standing award provisions, we recommend inserting a new subsection into Section 135A:



(4) Subsection (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 in a Modern Award immediately prior to commencement of Subsection (1).

Recommendation 2: Include a Transitional Provision to Preserve Existing Arrangements

To avoid retrospective disruption or legal uncertainty, a transitional clause should be included to ensure:

- Existing salary exemption provisions in modern awards remain valid and can continue to be used without modification; and
- Employers and employees currently relying on these arrangements are not required to re-contract or restructure pay agreements due to the introduction of this Bill.

This will support continued industrial stability and maintain confidence in long-standing, fair arrangements.