

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Fair Work Amendment (Restoring  
Penalty Rates) Bill 2018**

**No.     , 2018**

*(Mr Shorten)*

**A Bill for an Act to amend the *Fair Work Act 2009*,  
and for related purposes**



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# **A Bill for an Act to amend the *Fair Work Act 2009*, and for related purposes**

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Fair Work Amendment (Restoring Penalty Rates) Act 2018*.

## **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Fair Work Act 2009*

#### **1 Section 12 (definition of *reduction in take-home pay*)**

Repeal the definition, substitute:

*reduction in take-home pay:*

- (a) in relation to the cessation of copied State awards—see subsection 768BR(3); and
- (b) in relation to the variation of modern awards—see subsection 135A(5).

#### **2 Section 12 (definition of *take-home pay*)**

Repeal the definition, substitute:

*take-home pay:*

- (a) in relation to the cessation of copied State awards—see subsection 768BR(2); and
- (b) in relation to the variation of modern awards—see subsection 135A(4).

#### **3 At the end of Division 2 of Part 2-3**

Add:

##### **135A Protecting take-home pay**

*Object of this section*

- (1) The object of this section is to ensure that no employee's, or prospective employee's, take-home pay is reduced as a result of a variation of a modern award.

*FWC cannot reduce take-home pay*

- (2) A modern award cannot be varied in a way that would, or would be likely to, reduce the take-home pay of any employee covered by the award.

*Determinations reducing take-home pay of no effect*

- (3) A determination of the FWC made on or after 21 June 2017 that would, or would be likely to, have the effect of reducing the take-home pay of any employee covered by a modern award has no effect from the commencement of this section.

*Definition of take-home pay*

- (4) The **take-home pay** of an employee covered by a modern award is the pay the employee actually receives, or would receive if increases in the modern award minimum wage were included in the employee's pay:
- (a) including wages and incentive-based payments, and additional amounts such as allowances and overtime; but
  - (b) disregarding the effect of any deductions that are made as permitted by section 324.

Note: Deductions permitted by section 324 may (for example) include deductions under salary sacrificing arrangements.

*Definition of reduction in take-home pay*

- (5) An employee covered by a modern award suffers a **reduction in take-home pay** through a variation of the award if the amount of the employee's take-home pay for working particular hours or for a particular quantity of work would be less after the variation than it would have been before.