



House of Representatives
Standing Committee on Employment, Workplace Relations, Skills and Training
Australian Parliament
By email: employment.reps@aph.gov.au

27 February 2026

Dear Chair and Members of the Standing Committee,

Subject: Submission to the House Standing Committee on Employment, Workplace Relations, Skills and Training Inquiry into the operation and adequacy of the National Employment Standards (NES)

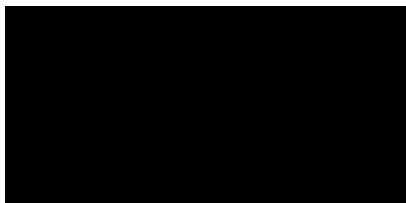
BCSDA is the Australian network partner of the World Business Council for Sustainable Development (WBCSD). We support business action aligned with sustainable development outcomes, including fair and inclusive workplaces and responsible business conduct across value chains.

BCSDA represents business members committed to sustainable development and responsible business conduct. Our members' interests include:

- a safety net that supports productive, fair, and inclusive work
- clear, administrable standards that can be implemented consistently
- strong compliance incentives and practical guidance
- policy settings that can be evaluated over time using robust, comparable data.

This submission focuses on practical, testable improvements to the NES system—especially where clearer definitions, better interactions, and better measurement would support both worker protections and employer compliance. We also recognise that several NES divisions are excluded from the scope of this review; where relevant, we address their interaction with other NES entitlements rather than the excluded provisions themselves.

Yours



Andrew Petersen
CEO | Business Council for *Sustainable Development* Australia



Executive summary

The National Employment Standards (NES) are the statutory minimum “floor” of employment conditions within Australia’s workplace relations system. The inquiry’s Terms of Reference ask the Committee to consider purpose and fit-for-purpose performance in a changing labour market; coherence, effectiveness and opportunities for technical improvement; interaction with other workplace instruments; cohort experience; and data gaps and actions needed to address them.

BCSDA supports a review approach that improves **clarity, administrability, and evaluability**, so that:

- workers can understand and rely on minimum entitlements in practice, and
- employers can implement obligations consistently and at lower compliance cost and risk.

What BCSDA is asking for (five practical actions)

1. **Make “reasonable additional hours” consistently operable** by publishing observable factors and strengthening recordkeeping expectations for hours worked and additional-hours requests/refusals.
2. **Publish an NES interactions “map” for common scenarios** (rostering/hours, leave, public holidays, termination) and prioritise technical simplification where complexity drives recurring non-compliance risk.
3. **Adopt a minimum viable indicator set and data strategy** to monitor NES performance over time, including disaggregation for key cohorts identified in the Terms of Reference.
4. **Publish a legal-to-data glossary (“translation guide”)** that maps legal concepts to the closest available statistical measures, clarifies limitations, and standardises interpretation.
5. **Support small business and supply-chain implementation** with a practical guidance pack and templates (checklists, worked examples, recordkeeping aids) to reduce downstream administrative burden and improve consistent application.

Scope and explanation of focus

The NES comprises multiple entitlements. This submission does not seek to address each entitlement in detail. Instead, it focuses on **system enablers** that improve the operation of the NES across entitlements and instruments:

- clearer and more consistently applied working-time settings
- simpler navigation of NES–award–agreement interactions
- stronger measurement, data quality, and evaluation feedback loops
- practical implementation tools that support compliance across business sizes and value chains.

Where the review excludes specific divisions, this submission focuses on **interactions** with other NES entitlements rather than the excluded provisions themselves.

Assessment: current opportunities and pressure points

BCSDA highlights four practical issues relevant to the inquiry’s “operation and adequacy” remit.

1 Working time: enforceability and consistent application: The maximum weekly hours standard is central to the NES. In practice, consistent application depends on how “reasonable additional hours” is interpreted and evidenced. Where expectations are unclear or records are incomplete, disputes are harder to resolve, and compliance risk rises for employers and workers alike.

2 Complexity hotspots: interactions between instruments: Complexity often arises where modern awards, enterprise agreements and flexibility arrangements lawfully affect *how* NES entitlements operate in practice (without undercutting the NES). These interaction points are predictable and can be mapped, explained, and—where feasible—simplified.

3 Cohort experience: uneven impacts require explicit attention: The Terms of Reference call for consideration of different experiences of the NES, including women, young workers, workers over 55, First Nations workers, and workers with disability. In BCSDA members’ experience, differences can arise from job design, roster predictability, role autonomy, caring responsibilities, work location, accessibility needs, and bargaining power. Without routine disaggregated monitoring, unequal outcomes may be missed or misattributed.

4 Evidence gaps: policy evaluation is constrained by measurement limitations: The inquiry asks what data gaps exist and what action is required. Policy discussions are often constrained by:

- limited routine publication of behavioural indicators (e.g., forgone leave, after-hours contact patterns)
- inconsistent mapping between legal concepts and statistical proxies
- limited ability to track outcomes over time and across cohorts.

Recommendations (with practical tools)

Recommendation 1 — Make the maximum weekly hours standard easier to apply consistently

Outcome sought (workers): more predictable, fair, and safe working-time practices, supported by clearer expectations and better dispute resolution.

Outcome sought (business): lower compliance uncertainty, more consistent application across sites/teams, and reduced dispute cost.

Proposal: Publish clearer practical guidance on “reasonable additional hours” using observable factors, supported by strengthened recordkeeping expectations.

What to build (practical tool): a short “reasonableness checklist” (illustrative factors)

- notice and predictability of the additional hours
- frequency, duration and cumulative impact over a roster cycle
- fatigue, WHS and role-related safety risks
- the employee’s personal circumstances (including caring responsibilities and accessibility needs)
- compensation or time-off arrangements (including time-off in lieu where applicable)
- degree of role autonomy and control over hours
- workplace patterns (e.g., seasonal peaks) and genuine business needs
- documented consultation and any agreed arrangements.

Recordkeeping (minimum expectations, proportional to business size)

- capture actual hours worked (including additional hours)
- document additional-hours requests, responses, and (where relevant) reasons for disagreement or refusal
- maintain records in a form that supports prompt clarification and resolution.

Implementation note: A guidance-and-records approach is a “technical improvement” pathway that can be implemented without redesigning the safety net, while improving consistent outcomes.

Recommendation 2 — Create an NES interactions map and prioritise simplification at high-risk friction points

Outcome sought (workers): easier navigation of entitlements and fewer underpayments or errors caused by complexity.

Outcome sought (business): reduced administrative burden and fewer recurrent compliance failures driven by hard-to-interpret interactions.

Proposal: Produce a practical, publicly accessible “NES interactions map” that explains common scenarios step-by-step and highlights where awards/agreements change calculations or processes.

What to build (practical tool): scenario guides + worked examples

Publish scenario-based guides for common pathways such as:

onboarding/classification → rostering/hours → leave accrual/taking leave → public holidays → termination and final pay.

One interaction example (illustrative):

A variable-hours worker rostered under an award with averaging provisions: how averaged hours interact with leave accrual, public holiday treatment, overtime thresholds, and termination payout calculations.

Prioritised simplification program

Use the interaction map to identify “hotspots” where technical simplification or clarifying guidance would deliver the highest compliance benefit (e.g., hours averaging, leave cashing-out processes, public holiday edge cases).

Implementation note: Host the interaction map in a digital format with plain-language examples and simple check steps that SMEs and employees can use without specialist advice for routine questions.

Recommendation 3 — Establish a minimum viable indicator set and evaluation cycle for NES performance

Outcome sought (workers): improved transparency on whether the NES is delivering equitable protection in practice.

Outcome sought (business): a clearer, more stable evidence base for reform discussions, reducing uncertainty and enabling better implementation planning.

Proposal: Adopt a minimum viable indicator set and an evaluation cycle that enables monitoring over time, including disaggregation for cohorts named in the Terms of Reference.

Minimum viable indicator set (illustrative)

1. **Working time**
 - actual hours worked (including additional hours)
 - unpaid overtime / time-off in lieu usage (where measurable)
 - after-hours contact indicators (frequency/duration proxies).
2. **Leave**
 - leave taken (usage) and patterns of deferred/forgone leave
 - basic accrual integrity measures (e.g., incidence of corrections where available).
3. **Pathways and stability**
 - longitudinal indicators of job stability and transitions relevant to NES coverage.

Cohort lens (illustrative examples of why disaggregation matters)

- **Women:** greater likelihood of caring responsibilities can make unpredictable hours and forgone leave more consequential.
- **Young workers:** often higher roster variability and lower bargaining power; greater exposure to misunderstanding of entitlements.
- **Workers over 55:** fatigue and health impacts can be more acute where additional hours are frequent.
- **First Nations workers:** impacts may differ by region and employment structure; accessibility of guidance and dispute pathways matters.
- **Workers with disability:** reasonable adjustments and predictable hours can materially affect real access to entitlements.

Data strategy (high-level, practical)

Use and align existing data sources where possible (surveys and administrative data), publish standard definitions and metadata, and ensure privacy-safe aggregation. Build a small set first, then scale.

Evaluation cycle (practical)

- establish baseline measures
- pilot guidance/tools and indicator reporting
- publish an annual dashboard and short interpretive summary
- conduct a review after 12–24 months to assess whether changes improved consistency, reduced disputes, and narrowed cohort disparities.

Recommendation 4 — Publish a legal-to-data translation guide to standardise interpretation

Outcome sought (workers and business): fewer misunderstandings in public debate and clearer interpretation of evidence used to justify change.

Proposal: Where statistical proxies are used, publish a short translation guide that:

- maps each legal concept to the closest available dataset measure
- explains what the measure captures and does not capture
- sets out appropriate use cases and limitations
- standardises definitions used in NES monitoring.

This can be published as a living document alongside the minimum viable indicator set.

Recommendation 5 — Support small business and supply-chain implementation with practical packs and templates

Outcome sought (workers): more consistent entitlement delivery in smaller workplaces and labour-intensive supply chains.

Outcome sought (business): reduced cost and risk of compliance burdens shifting downstream; improved consistency for lead firms managing supplier expectations.

Proposal: Develop a plain-language NES implementation pack suitable for SMEs and suppliers, including:

- a “quick start” compliance checklist for common scenarios
- recordkeeping templates for hours/additional hours and leave events
- worked examples for common industry patterns (e.g., public holidays, variable hours)
- a short “when to seek advice” escalation guide.

Implementation note: A supplier-ready version would support consistent application across value chains and reduce the risk of fragmented approaches.

OECD-aligned good practices that can inform local solutions

BCSDA highlights practical “good practice patterns” that are transferable and consistent with sustainable regulatory policy:

1. **Make evaluation outputs easy to find and use**
Centralised repositories with one-page summaries and clear “what changed / what worked” reporting improves transparency and learning, and reduce duplication.
2. **Design reforms around decision points and post-implementation review**
Building a routine evaluation cycle (baseline → pilot → review) improves accountability and reduces the need for large, infrequent redesigns.
3. **Co-design practical guidance and digital service delivery**
Plain-language scenario tools, templates, and digital guidance reduce compliance cost while improving worker understanding—particularly important where complexity arises from interactions between instruments.

Resources and methods that support evidence-informed reform

BCSDA notes the value of:

- public policy evaluation toolkits and evidence-synthesis approaches
- evidence-informed policymaking “ecosystem” models that clarify roles and incentives
- whole-of-government regulatory practice frameworks that support user-centred, data-driven regulation and continuous improvement
- business-facing capability-building resources (including sustainability and social performance learning programs) that support responsible implementation.

BCSDA can assist by convening member input on administrability and measurement—on an aggregated, non-commercially sensitive basis.

Conclusion

BCSDA supports the inquiry’s objective to assess whether the NES remains fit for purpose and to identify technical improvements that strengthen operation in practice.

We recommend prioritising reforms that:

- improve clarity and consistent enforceability (especially for working time)
- reduce complexity hotspots created by interactions between instruments
- strengthen measurement and evaluation (including cohort impacts and data gaps)
- support practical implementation across business sizes and supply chains.

BCSDA welcomes continued engagement and can provide practitioner insights to support effective, evidence-informed recommendations.

Appendix A — “Reasonable additional hours” checklist (illustrative skeleton)

A short checklist could ask decision-makers to document:

1. notice given.
2. frequency/duration.
3. cumulative impact.
4. WHS/fatigue risks.
5. personal circumstances (incl. caring/accessibility);
6. compensation/time-off.
7. role autonomy.
8. consultation and any agreement.
9. reasons for disagreement.

Appendix B — Minimum viable indicator set (illustrative)

Working time: actual hours; additional hours; after-hours contact proxy; unpaid overtime/time-off in lieu proxy.

Leave: leave taken; deferred/forgone leave proxy; accrual integrity proxy.

Pathways: stability and transitions relevant to NES coverage.

Disaggregation: women; young workers; workers over 55; First Nations workers; workers with disability.