

February 24, 2026

Re: House of Representatives Standing Committee on Employment, Workplace Relations, Skills & Training **Inquiry into the operation & adequacy of the National Employment Standards**

To: Ms Carina Garland MP,  
Inquiry Chair  
Parliament House  
Canberra ACT 2600  
[employment.reps@aph.gov.au](mailto:employment.reps@aph.gov.au)

Dear Ms Garland,

We are pleased to make a brief submission to the current Inquiry.

We are both industrial relations scholars and draw primarily on two articles we have published in the *Australian Journal Labour Law* on the operation and adequacy of the National Employment Standards (NES).

- Campbell, I., & Charlesworth, S. (2020). The national employment standards: An assessment. *Australian Journal of Labour Law*, 33(1), 36-51.
- Campbell, I., & Charlesworth, S. (2023). Promoting Secure Work: Two Proposals for Strengthening the National Employment Standards. *Australian Journal of Labour Law*, 36(2), 232-261.

Both papers are attached to our submission

We focus on:

- The adequacy of the NES as a safety net for Australian workers
- Employee rights to have information on their employment
- Reforms to the NES on maximum weekly hours and extending working time protections for part-time employees

We would be happy to provide further details to the Committee



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## The adequacy and operation of the NES as a safety net

While the statutory minima in the National Employment Standards (NES) are crucial protections for Australian employees, they have several major weaknesses.

The NES are broader than the Australian Fair Pay & Conditions Standards (AFPCS) on which they were based. However, the *range of entitlements* in the NES fall well short of what might be expected in a floor of minimum standards in a modern employment system. They articulate poorly with other elements of the system such as award minima. There is also a *lack of substance* in many individual NES provisions, with the result that their value as protective regulation is diminished. We refer below to what might be described as one such hollow NES provision, that on ‘maximum working hours’.

An important constraint on the reach of the NES concerns *uneven coverage*. While the NES have a broad coverage of employees (in the national system), they do not extend to non-employees. The lack of clarity in the boundary between employees and the self-employed means that employers, in pursuit of lower labour costs and increased employer-orientated flexibility, can shift vulnerable workers into self-employment, thereby subjecting the ‘sham’ self-employed, including many platform (‘gig’) workers, to wages and work conditions below those required to be offered to employees in both the NES and in awards.

In respect to service requirements, several NES provisions (eg unpaid parental leave and to the right to request flexible work) are only accessible *after* an employee completes 12 months service with their employer, or, if a casual, only if they have been employed regularly and systematically for 12 months and have a reasonable expectation of ongoing employment. As a result, employees with job tenure of less than 12 months are unfairly excluded from access to these NES. As at February 2025, 17% of Australian employees (18% of female and 16% of male employees) had worked less than 12 months for their employer.<sup>1</sup>

Casual employees have restricted entitlements to many of the NES provisions which should provide protections for all Australian employees at a minimum. While beyond the remit of the current Inquiry, the use of exemptions for casual employees throughout the NES is inappropriate in the Australian labour market context where in August 2025, a fifth of Australian employees (20%) (21% of female and 18% of male employees) are employed on a casual basis. Further, 47% of part-time workers, the majority of whom are women, work on a casual basis.<sup>2</sup> In view of the revised object of the FW Act to include the promotion of secure work and gender equality (s 3), it is important to observe that women are more likely to be employed in part-time hours work than men and to work in industries where casual part-time employment is the norm, such as in retail.

Finally, there is a *no direct or regular mechanism for reviewing and altering NES standards*. As legislated standards, the NES can be altered through new legislation, but they are not equipped with any internal mechanisms to facilitate analysis and public discussion. Any system of minimum standards requires frequent adjustment, in order to repair defects and to update the standards in line with changing workforce expectations, changing work practices and changing labour markets. Up until the “WorkChoices” amendments to the *Workplace Relations Act 1996*, test cases before the Commission provided a useful mechanism that fused together review, debate, consultation and change. Since then, while reforms to the NES have been recommended by various Senate inquiries,

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<sup>1</sup> ABS 6223.0: *Job Mobility* February 2025.

<sup>2</sup> ABS 6336.0: *Working Arrangements*, August 2025.

few have been taken up legislatively. For example, the Senate Select Committee on Work and Care recommended in its Final Report in 2023 (Recommendation 17) that the definition of 'immediate family' in the NES on carer's leave be amended and broadened; that the government consider the adequacy of existing leave arrangements and investigate potential improvements in leave arrangements, including separate carer's leave and annual leave (Recommendation 18); and that the Fair Work Commission be asked to review access to and compensation for paid, sick and annual leave for casual and part-time workers (Recommendation 19).

In its 2022 Interim Report, the Senate Select Committee on Work and Care made another recommendation also relevant to the scope and adequacy of the NES. Apart from its recommendations on the NES right to request flexible working arrangements, whose review has been excluded from this Inquiry, Recommendation 5 is on improved rostering rights for employees, including through implementing rostering practices that are predictable, stable and focused on fixed shift scheduling (for example, fixed times and days). Clear rights to predictable and stable rosters, as we discuss below, is a highly relevant right that ought to be considered a subject for a new NES. However, no further political discussion or action has ensued in respect of the 2022 or 2023 Senate Select Committee recommendations highlighted above.

### **Employees' right to information about their employment**

A major omission in the NES is the lack of any legal requirement for employees to be informed about the *specific* details of their employment. Currently the only rights held by employees to information about their employment reside in the existing NES requirement that employers provide, on commencement of employment, a Fair Work Information Statement (FWIS) and, if appropriate, a Casual Employment Information Statement (CEIS). Both the FWIS and the CEIS are generic statements of broad rights held generally by Australian employees, including to the NES, and do not provide any detail on the specific employment relationship between an employee and their employer.

Worker knowledge of their employment rights is crucial to the exercise of those employment rights. There is a robust scholarship on the important role that worker knowledge plays in both the compliance and enforcement of labour rights. As Jill Murray and Rosemary Owens observed in 2009, 'the effectiveness of any safety net is in large part predicated upon all parties who are governed by the system being able to know and understand their rights.'<sup>3</sup> The lack of worker awareness about their specific employment rights, with the partial exception of the right to a minimum wage, has been described in numerous Australian reports on worker exploitation in industries as diverse as horticulture and hospitality and identified as a key contributor to precarity for vulnerable groups of workers such as recent migrants and refugees. Worker lack of knowledge about their labour rights and entitlements has also been found in several federal government inquiries to underpin the breaching of those rights by employers.

Our proposal is for an amendment to the NES to introduce a new information document for employees, which we term a Statement of Terms and Working Conditions (STWC). This requirement is not novel but corresponds to the approach taken in many other jurisdictions. In New Zealand, for example, employers are required to provide an individual 'written employment agreement' to every employee which includes the description of the work to be performed, wages, working time schedules, including the nature of employment if it is fixed term, the number of

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<sup>3</sup> J Murray and R Owens, 'The Safety Net: Labour Standards in the New Era', in A Forsyth and A Stewart (Eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy*, Federation Press, Sydney, at 68.

agreed hours, start and finish times, days of the week the employee will work, the wage rates or salary payable and leave rights along with other rights. As Business New Zealand puts it:

*A written employment agreement is a legal requirement, and it's a great foundation for an employment relationship. It helps you and your employee be clear on:*

- *what the employee needs to do*
- *what to do if things aren't going well*
- *the benefits and obligations you've agreed to.*

*It's the place you can include all the details on what's expected. Both you and your employee can refer to it if there is any disagreement on how well they are performing in their role.<sup>4</sup>*

Business New Zealand also provide an employment 'agreement-builder' for employers to customise written employment agreements to ensure that the mandatory as well as recommended provisions relevant to the individual employee are included.<sup>5</sup>

Another example is the UK, where employers are required to provide employees with a written statement of employment particulars on their first day of employment. This initial statement covers similar matters to those specified in New Zealand. It also provides information about any applicable probation period and obligatory training. A wider written statement, which must be given to employees within two months of the start of employment, includes information about pensions and pension schemes, collective agreements, any rights to non-compulsory training provided by the employer and disciplinary and grievance procedures. The UK also provides a template to assist employers.<sup>6</sup>

In Australia, our proposal is that a STWC be provided to all employees. This Statement should communicate information in writing concerning the specific job, including details of interest to the employee such as job title (and classification), wage rates, working-time conditions including applicable premia for overtime and unsocial hours of work, type of employment and the name of the relevant regulatory instrument (for example, award, enterprise agreement). That is, it should include the details adhering to the job in which the employee is working or is newly employed.

The STWC should include the following information for each employee:

- the name of the relevant award or, if applicable, the enterprise agreement under which the employee is engaged;
- the name of the employer or business entity employing the employee;
- the employee's name;
- the job title and award/enterprise agreement classification applicable to the employee;
- the type of employment contract: full-time, part-time, fixed-term or casual;
- the currently applicable rates of pay and applicable premia for unsocial hours & overtime;
- other applicable award working time provisions such as minimum engagements;

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<sup>4</sup> Business New Zealand at: <https://www.business.govt.nz/people-and-leave/advertising-and-hiring/employment-agreements-and-making-a-job-offer>.

<sup>5</sup> Business New Zealand at: <https://eab.business.govt.nz/employmentagreementbuilder>.

<sup>6</sup> Arbitration Conciliation & Advice Service at: <https://www.acas.org.uk/templates-for-written-statements/written-statement-employee-template>.

- where the employee is employed as casual, the definition of casual employment as well as conversion rights and protections;
- chart of the applicable NES with links to detailed provisions on the Fair Work Ombudsman (FWO) website;
- the right to be provided with pay slips, with details of the employee's pay for each pay period (both gross and net) including hours worked and applicable rates of pay, details of employer superannuation contributions and the name of the fund to which payments were made; and
- other employee protections such as those on the current FWIS noted above, including rights to freedom from discrimination, bullying or harassment, sexual harassment, coercion, misrepresentation, sham contracting and undue influence or pressure.

The STWC should be provided on commencement to employees and to all employees engaged by an employer on an annual basis. Given the large number of award-reliant employees, and the industries in which they are predominantly employed, the STWC should also be provided after each annual National Minimum Wage (NMW) decision, which flows on to awards, so that the applicable rates of pay can be updated. The FWO already provides this information annually for each award on 1 July after the annual NMW decision. These pay summaries include the applicable rates of pay for casual and permanent workers with applicable premia for unsocial hours and overtime for each pay classification — and are all readily accessible on the FWO website.

The regulatory burden on employers of this proposal is thus relatively minor. It merely replaces their existing obligations in respect of the FWIS and the CEIS with an alternative statement. It uses the information in pay slips for employees that employers are currently obliged to provide under the Fair Work Regulations 2009 (Cth). More broadly, it draws on information that the employer should have already assembled in order to ensure a legal employment relationship with the employee. By accessing a STWC template prepared by the FWO, and information already on the FWO website on wages and conditions and other rights, such as under the NES and awards, Australian employers could easily build, as do their British and New Zealand counterparts, an individual Statement relevant to each job their employees occupy or to which they are appointed. Employer groups in Australia often lament the complexity of Australia's labour laws and on occasions blame the complexity of awards for underpayments or other breaches of labour rights. A new STWC may well assist employers by improving their knowledge of employee rights and entitlements, thereby acting as a barrier to any inadvertent underpayments or breach of rights.

The proposed STWC would apply to all employees, but its positive impact is likely to be greatest for insecure workers, who are most likely to lack information voluntarily provided by their employer and to lack awareness of their employment rights and entitlements. The information gap for insecure workers tends to amplify their labour insecurities in practice, including through opening space for employer non-compliance. Conversely, plugging the information gap can function indirectly to address the problem of insecure work by using a pathway of increased knowledge to raise worker bargaining power. Though indirect, this can nevertheless remedy one significant source of employee powerlessness and contribute to reducing insecurities and to promoting secure work in line with the 2022 amendments to the FW Act's object

Finally, it is important to raise the issue of enforcement of the FWIS and our proposed STWC. The FWO is the Australian body that enforces employer compliance with the NES. According to its public reports, FWO enforcement action rarely includes failure by employers to provide employees with the FWIS. Yet, in its range of enforcement activity and in much of the litigation undertaken by the FWO, the failure to observe other NES, such as annual leave entitlements, is a relatively

commonly reported breach. Employer compliance with the obligation to provide the proposed STWC to all employees on commencement and annually thereafter would need to be proactively enforced by the FWO. Indeed, failure to do so could incur additional penalties where other common breaches in respect of wage rates and leave entitlements are found, on the basis that if these rates and applicable premia were set out in the STWC, employers would be expected to be well aware of their award and NES obligations.

**Strengthening the ‘Maximum Weekly Hours’ entitlement & extending protections to part-time employees**

The current NES provision on ‘maximum working hours’ applies in principle to all employees. This provision defines standard weekly ordinary hours as 38 hours and then points to the possibility of ‘reasonable additional hours’. The definition of standard ordinary hours has only limited value because of the possibility of averaging these hours over a longer period, up to six months for employees outside awards and agreements. The most problematic element is, however, the notion of ‘additional hours’, which can be added on to standard hours with few effective controls. Thus, there is no requirement that additional hours should be paid at premium rates or indeed even that they should be paid at all. There is little control over the number of additional hours other than the requirement that they be ‘reasonable’, with the definition of ‘reasonable’ framed in terms of a list of unweighted criteria, including several that refer to business needs.

Far from protecting employees, the provision seems oriented more to buttressing the power of employers to impose schedules irrespective of the wishes of employees. Apart from all other objections, the provision is misnamed, since it does not, on any interpretation, set a maximum limit on working hours. It is a powerful example of the weakness of working-time regulation in Australia, compared to other industrialised societies. The NES provision for ‘maximum hours of work’, despite its contentious structure, has attracted only a small amount of federal case law. Cases have focused, not surprisingly, on what might constitute ‘reasonable’ additional hours as well as on how the specified 38 weekly hours should be calculated, as we set out in our 2023 article.

Partly due to the lack of substance of the NES provision, schedules of long, and even very long hours daily and weekly hours, persist in Australia for many full-time employees. According to recent Australian Bureau of Statistics data, in November 2025, 70% of Australian employees worked full-time, as did of 58.4% of female employees and 81.5% of male employees. As in Table 1 below, a large minority of full-time employees worked longer than 45 hours a week.

**Table 1: Actual weekly hours worked by full-time employees in all jobs, November 2025**

<i>Actual Hours</i>	<i>Total</i>	<i>Women</i>	<i>Men</i>
1-9 hours	1.1	1.2	1.0
10-19 hours	1.3	1.5	1.2
20-29 hours	3.2	3.3	3.2
30-34 hours	5.5	5.8	5.2
35-39 hours	37.7	44.8	32.7
40-44 hours	29.0	26.8	30.6
45-49 hours	8.6	7.0	9.7
50-59 hours	8.0	6.3	9.2
60-69 hours	3.3	2.1	4.1
70 hours and over	1.6	0.7	2.5

Source: ABS 6291.0.55.001 - EQ04 - Employees by hours actually worked in all jobs, by status in employment November 2025

While there has been a decrease in long hours since the 1990s, in November 2025, almost a quarter of all full-time employees (22.1%) worked 45 hours or more a week. Male full-time employees (26%) were much more likely than female full-time employees (16.6%) to work 45 hours and over a week. When we look at very long full-time hours, male full-time employees were much more likely than their female counterparts to work 50 hours and over (16.4%) and extremely long hours of 60 hours and over (7.2%).

For many full-time employees, their schedules are composed of standard hours plus large amounts of unpaid additional hours ('unpaid overtime'). There is a good case, on grounds of health and safety at work, work-life balance and gender equality, for adding substance to the 'maximum hours of work' provision.

The [Work+Family Policy Roundtable](#) has highlighted that the economic and family caregiving costs of men's long work hours on Australian women's earnings is high by international standards - not only in terms of women picking up additional unpaid care and household work but also in limiting women's capacity to work and earn equally. The Roundtable advocates a statutory cap on the maximum hours of work. In their [2025 Election Benchmarks](#) the Roundtable argued that such a cap would have an impact on gender equality,<sup>7</sup> the promotion of which is now an object of the Fair Work Act. Drawing on recent research evidence, the Roundtable proposed that the NES on maximum weekly hours of work be reviewed to ensure that while 38 hours a week is reasonable as the maximum, there also needs to be stronger disincentives to long hours and consideration of other ways to reduce excessive overtime, including through the work, health and safety system, which requires employers to ensure safe working hours as a part of providing a safe workplace.

Other structures (such as ensuring the payment of overtime and pay premiums), should also be examined. For example, where overtime may occasionally be necessary for genuine sporadic business reasons, the onus should be on employers to demonstrate this is the case, with appropriate payment of overtime compensation mandated in the Standard. Currently overtime provisions are contained in awards, with significant variation between those awards in male-dominated and female-dominated sectors, with far weaker protections operating in the latter. A stricter application and better enforcement of the NES on maximum weekly hours are needed to curb expectations employees should work more than 38 hours a week, except in rare and limited circumstances. This action would also support men's opportunity to share the unpaid care load and reduce the health harms of excessive working hours.

Importantly, the NES Standard on maximum weekly hours is not matched by other working time Standards such on minimum part-time hours, minimum engagements, or the right to payment of overtime when hours are worked in addition to guaranteed part-time hours. Such working time protections are currently found in awards, again with, as noted above, significantly inferior protections in female dominated sectors.<sup>8</sup> The problem of short part-time hours (less than 20 hours per week) in Australia is an endemic and gendered one. As at November 2025, 41.6% of female employees and 18.5% of male employees worked on a part-time basis. As shown below in

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<sup>7</sup> See: <https://workandfamilypolicyroundtable.org/wp-content/uploads/2025/04/Federal-Election-Benchmarks-2025.pdf>.

<sup>8</sup> See: <https://www.fwc.gov.au/documents/sites/award-review-2023-24/am202321-data-profile-work-and-care.pdf>.

Table 2 which shows the distribution of actual hours for all employees, women are more likely to work *short part-time* hours (18%) than men (10%).

**Table 2: Actual weekly hours worked by all employees in all jobs, November 2025**

<i>Actual hours</i>	<i>Total</i>	<i>Female</i>	<i>Male</i>
1-9 hours	5.2	6.1	4.3
10-19 hours	8.8	12.0	5.6
20-29 hours	13.4	17.6	9.3
30-34 hours	10.4	12.9	7.9
35-39 hours	26.4	26.2	26.7
40-44 hours	20.3	15.6	24.9
45-49 hours	6.0	4.1	7.9
50-59 hours	5.6	3.7	7.5
60-69 hours	2.3	1.2	3.3
70 hours or more	1.6	0.7	2.5

Source: ABS 6291.0.55.001 - EQ04 - Employees by hours actually worked in all jobs, by status in employment November 2025

Casual employment is outside the remit of this Inquiry, but we note that much *non-casual* part-time work has been constructed as *on-demand* work with employers taking advantage of the shortfalls in protection for permanent part-time employees in order to increase the on-demand component of part-time jobs.<sup>9</sup> This practice is endemic in many feminised sectors with flexed up hours above guaranteed minimum hours being paid at ordinary time rates and rostering arrangements being changed at short or no notice.<sup>10</sup> Not only do these conditions breach Australia’s obligations in respect of ILO Convention 175 on Part-Time Work 1994, which Australia ratified in 2011, but they have worked to effectively casualise much continuing part-time work in feminised sectors without the compensation of the casual loading. In its 2022 Election Benchmarks, the Work+Family Roundtable proposed that working time protections for part-time workers be strengthened such as through a minimum floor of secure weekly working hours and continuous daily hours of work.<sup>11</sup> In our view, serious consideration ought to be given to ensuring that such protections, including rights to secure rosters and the right to overtime payments when workers are asked to work beyond their agreed part-time hours, are universalized and incorporated in the NES as additional standards.

<sup>9</sup> See: Campbell, I., Macdonald, F., & Charlesworth, S. (2019). On-demand work in Australia. In Michelle O’Sullivan et al. (eds.) *Zero-Hours and On-Call Work in Anglo-Saxon Countries*, Berlin, Springer Press (pp. 67-90).

<sup>10</sup> See: Cortis, N., Blaxland, M., and Charlesworth, S. (2021). *Challenges of work, family and care for Australia’s retail, online retail, warehousing and fast food workers*. Sydney: Social Policy Research Centre, UNSW Sydney.

<sup>11</sup> See: [https://workandfamilypolicyroundtable.org/wp-content/uploads/2022/04/WorkFamilyBenchmarks2022\\_online\\_s-1.pdf](https://workandfamilypolicyroundtable.org/wp-content/uploads/2022/04/WorkFamilyBenchmarks2022_online_s-1.pdf)