AUSTRALIAN SERVICES UNION

By your side

Friday 6 March 2026

Dr Carina Garland MP
House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training
Parliament House
CANBERRA ACT 2600

Dear Dr Garland,

**Re: Submission to the Inquiry into the operation and adequacy of the National Employment Standards**

I am pleased to provide the ASU's submission to the Committee's Inquiry into the operation and adequacy of the National Employment Standards (NES) under the *Fair Work Act* 2009.

The ASU is one of Australia's largest and most diverse trade unions, representing more than 135,000 workers across a wide range of industries, including transport, local government, call centres, social and community services, energy, water, airlines, and the private legal sector.

The NES is the cornerstone of Australia's workplace relations safety net. To perform its statutory role effectively, the NES must operate as a living framework - capable of responding to changes in the organisation of work and ensuring minimum standards remain meaningful in practice, not merely formal in law.

Since the NES were introduced, the Australian labour market has undergone profound change. Work has become more insecure and fragmented; workloads have intensified; and workers are increasingly subject to unpredictable and unstable rostering. At the same time, digital technologies - including artificial intelligence -are reshaping how work is allocated, monitored and controlled. These developments have widened the gap between statutory entitlements and workers' lived experience, undermining the protective function the NES was intended to serve.

In that context, the ASU submission sets out practical reforms to ensure the NES remains fit for purpose in contemporary workplaces, consistent with its original intent as a universal and enforceable minimum floor. In summary, the ASU's priorities include:

1. Getting time back through reductions in working time and stronger protections for predictable hours and roster justice;
2. Promoting health and dignity through reforms to leave and evidence requirements;

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3. Ensuring security in the digital age through stronger minimum standards to manage technological change; and
4. Strengthening enforcement so that compliance and deterrence give real force to minimum standards.

The ASU supports and adopts recommendations advanced by the Australian Council of Trade Unions (ACTU).

Thank you for the opportunity to contribute to this important review. If the Committee or Secretariat would like any further information, or if the ASU can assist through evidence at a public hearing, please do not hesitate to contact Kelly Thomas, ASU National Industrial Director at [redacted].

Kind regards,

[redacted]

Emeline Gaske
**NATIONAL SECRETARY**

[redacted]

[redacted]

# [redacted] ASU Submission

## Review of the National Employment Standards

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# Who we are

The Australian Services Union (ASU) is one of Australia's largest and most diverse trade unions, covering more than 135,000 workers from across a wide range of industries, including transport, local government, call centres, social and community services, energy, water, airlines, and the private legal sector.

# Introduction

The ASU welcomes the opportunity to contribute to the Review of the National Employment Standards (NES). The NES is the cornerstone of Australia's workplace relations system, establishing a [redacted] minimum safety net intended to protect workers' health, dignity and financial security. To perform this role effectively, the NES must operate as a living framework - capable of responding to changes in the organisation of work and ensuring that minimum standards remain meaningful in practice, not merely formal in law.

[redacted] the Australian labour market has undergone profound change. Work [redacted] fragmented; workloads have intensified; and workers are [redacted] table and unstable rostering arrangements. At the same time, digital [redacted] l intelligence - are reshaping how work is allocated, monitored and controlled. These developments have placed a growing strain on minimum standards designed around more stable and predictable employment models, widening the gap between statutory entitlements and workers' lived experience, and undermining the protective function the NES was intended to serve.

This submission sets out practical reforms to ensure the NES remains fit for purpose in contemporary workplaces, consistent with its original statutory intent. Introduced as a central pillar, the NES was designed to establish a "minimum floor" of employment entitlements for all national system employees. This submission focuses on priorities:

1. getting time back through reductions in working time and stronger protections for predictable hours and roster justice;
2. promoting health and dignity through reforms to leave and evidence requirements;
3. ensuring security in the digital age through stronger minimum standards to manage technological change; and
4. strengthening enforcement so that compliance and deterrence give real force to minimum standards.

[redacted]

Where indicated, the ASU adopts and supports relevant submissions and recommendations of the Australian Council of Trade Unions (ACTU).

# Recommendations

1. The ASU recommends that section 62 of the FW Act be amended as follows:

   *Maximum weekly hours of work*

   *(1) An employer must not request or require an employee to work more than the following number of hours in a four-day week unless the additional hours are reasonable:*

*(a) for a full - time employee—~~38~~30.4 hours; or*

*(b) for an employee who is not a full - time employee--the lesser of:*

*(i) ~~38~~30.4 hours; and*

*(ii) the employee's ordinary hours of work in a week.*

2. The ASU recommends that the following provision be added to s.62:

***Arrangements for working hours***

*(5) An employer must provide an employee (other than a casual employee) predictable hours of work.*

[redacted]

*(6) In determining whether hours of work are predictable for the purpose of sub-section (5), the following must be taken into account:*

*(a) whether the employer has provided a regular pattern of work in writing, including the [redacted] and finish times;*

*[redacted] lar pattern of work are made on at least two weeks' notice and [redacted] ultation of at least two weeks, including taking into account the [redacted] cumstances (including family responsibilities and caring arrangements);*

*(c) overtime payments are payable for all work performed outside the regular pattern of work; and*

*(d) an employee may refuse a roster change if it is unreasonable regarding their personal circumstances.*

*(7) In the case of a dispute about sub-section (5), the status quo remains until the dispute is determined.*

3. The ASU recommends amending section 62(3) as follows:
*"(ba) whether the additional hours are a result of work intensification;"*
4. The ASU recommends that the NES be amended to ensure that annual leave and personal leave continue to accrue whilst a worker is accessing long service leave through a portable scheme.
5. The ASU recommends that s.107(3) be amended such that "evidence that satisfies a reasonable person" is only required after two consecutive days' absence. Further, that where an employer requires evidence in the form of a medical certificate, that it is at their expense, not the employee's expense.
6. The ASU recommends that the NES be expanded to include 10 days of paid reproductive leave.
7. The ASU recommends that the definition in s. 12 be amended to specifically refer to partners, former partners, stepchildren and children in foster care. In addition, the definition be amended to recognise kinship relationships for Aboriginal and Torres Strait Islander people, and compassionate leave be expanded to 10 days per annum for Sorry Business/Sad News.
8. The ASU recommends that s.87(1) is amended to increase paid annual leave from 4 to 5 weeks; and from 5 to 6 weeks for shift workers who qualify for an additional week of annual leave.
9. The ASU recommends that s.117(3) be amended by adding a new paragraph (c) in the following terms:

*"(c) then increase the period by six months if the employment is terminated because of the introduction of artificial intelligence-related technology."*

10. The ASU recommends that s.123(1)(c) be amended as follows:
    *"(1) This Division does not apply to any of the following employees: …*
    *(c) a casual employee (unless they are a regular and systematic casual); …"*
11. The ASU recommends inserting new sections 125C and 125D which mirrors the legislative drafting in relation to the Fair Work Information Statement and the Casual Employment Information Statement.
12. The ASU recommends that the final row in table in s.119(2) of the FW Act be amended as follows:

| | | |
|---|---|---|
| [redacted] | *At least 10 years* | *20 weeks* |

13. The ASU recommends amending s.119 of the FW Act to include a provision to the effect that: For the period of service during which the employee was employed on a part-time basis under a return-to-work arrangement, redundancy pay shall be calculated based on the employee's base [redacted]y hours of work at the full-time rate applicable to the employee's [redacted]
15. The ASU also adopts the recommendations made by the ACTU.

# 1. Getting time back

## 4 Day Work Week

The Australian workforce has changed significantly since the current protection for maximum weekly hours was established through the early 1980s. The 38-hour work week, outlined in s.62, for most workers means eight hours per day over a five-day week. The composition of the workforce looks very different today than it did over forty years ago. It is the norm for women to work, with the participation rate of women in the workforce having increased from 44.4% in 1983 to 62.9% today.[1] The participation of migrant workers and workers of colour has also increased, as have the rates of workers with disabilities.

Concurrently, casualisation and insecure work has increased over this period. Over the last decade or so, the rates of workers in either casual work or gig-based work has hovered between 24-21%.[2] This is much higher than it was in the 1980s. Casual work is especially prevalent in the retail, hospitality, food services, and care sectors – sectors predominantly employing women and young workers, who are not able to benefit from the 38-hour work week provisions as they were envisioned in the 1980s. Despite this, it is expected that these sectors are expected to grow. For example, the health care and social assistance sector is predicted to grow by more than 23%, from

[1] 6202.0 Labour Force, Australia Table 1. Labour force status by Sex, Australia - Trend, Seasonally adjusted and Original

[2] https://www.abs.gov.au/statistics/measuring-what-matters/measuring-what-matters-themes-and-indicators/prosperous/secure-jobs

2.1 million workers in 2023 to 2.6 million in 2033.[3] If these predictions materialise, it will be the most growth of any other sector by some margin.

Work is also becoming more and more complex. The use of artificial intelligence (AI) has become more commonplace, which will likely increase in the future. ASU members in the community and disability sectors report their work is also becoming more complex as the people they support are subject to more complex issues, like alcohol and other drug addiction, gambling, racism, discrimination, homelessness and financial precarity.

According to the Productivity Commission, and despite recent legislative wins like the Right to Disconnect, workers are working longer hours than ever before.[4] It is estimated that 15% of work in the community sector is unpaid.[5] Full-time workers in the community sector work on average 4.5 [redacted] and part-time workers work on average 2.6 hours unpaid weekly.[6] For a full-time Level 4 worker under the SCHADS Award, this means a loss on average of over $10,000 per year.[7] Given that the Productivity Commission and other research organisations suggest that there are approximately 1 million workers in Australia broadly part of the community services industry,[8] the lost wages in the sector due to unpaid work would total billions of dollars.

[redacted] part of Australian working life. A global study by firm McKinsey [redacted] orkers reported burnout, a huge 13% higher than the global standard.

[redacted] impact that AI will have on workplaces. Many predict that entry-level and administrative style jobs will be replaced by AI, making it harder for younger workers, or workers in traditionally women-dominated jobs like admin, to find work. Task fragmentation is also predicted; whereby insecure work will increase with workers only being called in to perform discrete parts of a job, ad hoc, which can only be performed with human oversight.

In this ever-increasing complex working life, and with the rise of AI, more must be done to ensure workers' standards of living are not declining. For this reason, the NES must enshrine a 4-day work week, standardising the model of a 30.4-hour week with no loss of pay. It is a clear and simple way for workers to obtain productivity dividend from the introduction of AI.

Trials for the 4-day work week have been shown to improve worker wellbeing. In workplaces where it's been trialled, 88% of workers reported a positive or extremely positive reaction, and 64% reported a reduction in burnout.[9] Workers reported that:

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[3] https://www.abs.gov.au/statistics/measuring-what-matters/measuring-what-matters-themes-and-indicators/prosperous/secure-jobs
[4] https://www.pc.gov.au/media-[redacted]/articles/labour-productivity/
[5] Cortis, N. and Blaxland, M. (2022) Carrying the costs of the crisis: Australia's community sector through the Delta outbreak. Sydney: ACOSS. https://www.acoss.org.au/wp-content/uploads/2022/04/ACSS-Full-2021-Report-v6.pdf
[6] Dr Natasha Cortis and Dr Megan Blaxland, UNSW Social Policy Research Centre, "Australia's social and community services workforce: characterisation, classification and value", 19 April 2024, page 24, 25 accessed: https://static1.squarespace.com/static/661f04b91fdda6655ac8d468/t/664ee846fbe0332f1a2dbb3a/1716447307208/Final+report+for+ASU_19_April_2024.pdf
[7] Calculated based on level 4.1 Classification under SCHADS Award, earning $44.58 per hour
[8] Productivity Commission, Report on Government Services 2025, accessed: https://www.pc.gov.au/ongoing/report-on-government-services/2025/community-services/ and IbidWorld, Community Services in Australia – Employment (2008-2032), accessed: https://www.ibisworld.com/australia/employment/community-services/1770/
[9] Experimenting with a 4 day week in Australiasia 2023, accessed: https://www.4dayweek.com/anz-2023-pilot-results

- An overall reduction in stress, reported by 38% of trialled workers;
- A decline in anxiety, depression and burnout; reported by 49% of workers;
- Increased work-life-balance, with stress relating to work-life-balance declining by 50%;
- Other health benefits like less fatigue (38% reported), fewer sleep problems (35%) and more time to exercise (36%); and
- As a result, absenteeism dropped by 44.3%, and retention increased.

The 4-day work week will also help to increase productivity. The Productivity Commission highlights that Australian workers are working longer while not benefiting any form of dividend, due to a lack of business investments in skills, training and systems. Changing the work parameters will inherently boost labour productivity. This is especially important for sectors like the community and care and [redacted] measuring and increasing productivity is fraught. The 4-day work week should also be seen as part of a digital just transition, ensuring protections for workers while technologies risk overhauling how we work.

In Tasmania, ASU Victorian/Tasmanian branch members fought for and won a 4-day work week at [redacted] won a 30.4 hour week with no loss of pay. This agreement was [redacted]ctivity gains. The CEO, Sam Johnson OAM, said, at the time:[10]

> *[redacted]ressive proposal that recognises the changing nature of work and the [redacted]g, productivity and sustainability in the public sector… I cannot thank and commend the Australian Services Union enough,[who has] worked side by side with us."*

He went on to say:

> *"I know there's some nervousness amongst our people, without a doubt, and there will be some nervousness around the country, without a doubt, but other countries have already proven that what we're putting on the table can work and does work."*

If the agreement proceeded, it would have been a nation-leading win for conditions. However, just recently, after a coordinated campaign by the Tasmanian Chamber of Commerce and Industry, the CEO of Launceston Council walked back the agreement.[11]

This demonstrates that the 4-day work week is still subject to needless ideological challenges, even when there is an agreement between an employer and workers, and in the face of a demonstrated range of benefits in productivity and to the workforce.

ASU members will continue to advocate for increased working standards and more work-life balance. The 4-day work week is the next step in reduction in working hours, and in the pursuit of fair and equitable conditions [redacted]force.

It is not just ASU members who consider a 4-day work week worthy of contemporary workplaces. Recommendation 28 of the Senate Work and Care Committee was for the Australian Government to undertake a four-day work week trial based on the model agreed at the Launceston City Council (100:80:100). The Committee further recommended that the trial be implemented in diverse sectors and geographical locations.

However, with knee-jerk negative and ideological reactions like that taken by TCCI (backed by the Business Council of Australia), workplaces will be harnessed by archaic working models that do not

[10] https://www.launceston.tas.gov.au/Council-Region/Proposed-Enterprise-Agreement
[11] https://tcci.com.au/news/news-media/media-releases/tcci-led-business-push-secures-backdown-on-30-4-hour-week

embrace technological change and modern practices, which would otherwise benefit workers and the workplace.

## Recommendation: the 4-day work week

That section 62 of the FW Act be amended as follows:

> *Maximum weekly hours of work*
>
> *(1) An employer must not request or require an employee to work more than the following number of hours in a four-day week unless the additional hours are reasonable:*
>
> *(a) for a full - time employee—~~38~~30.4 hours; or*
>
> [redacted]*ployee who is not a full - time employee--the lesser of:*
>
> *(i) ~~38~~30.4 hours; and*
>
> *(ii) the employee's ordinary hours of work in a week.*

[redacted]

*"Work controls my life right now"*

- Airline worker

The ASU represents workers in the airline industry, a sector that operates 24 hours per day, 365 days per year. It is an industry that is subject to peaks and troughs, but those are largely predictable (for example, holiday periods are notoriously busier at airports).

ASU members consistently report that poor rostering practices are the single biggest issue affecting their working lives. Members describe rostering systems designed primarily to maximise operational coverage, with little regard for worker recovery, safety, or the ability to maintain a life outside work.

Across member surveys and direct accounts, several clear and recurring themes emerge.

Unpredictable rosters prevent workers from planning their lives

Members overwhelmingly report that rosters are unpredictable and frequently altered at short notice, often without consultation or regard for personal commitments. This instability makes it impossible for workers to plan family time, caring responsibilities, or even basic rest and recovery.

> *"The constant roster changes that occur six days before our shift are not fair. We plan our lives accordingly and then have to change everything because planners need to cover work."*
>
> *"Forced shift changes—unable to plan personal life, plans constantly ruined, inability to take days in lieu or request leave for personal or family events. These are rejected most of the time."*

Members also report that availability is assumed rather than negotiated, even when changes occur within very short timeframes.

> *"Shift changes happen last minute. They don't pay overtime and they don't ask for your availability, even if it's within 48 hours, because it's for 'operational requirements'."*

Rostering outcomes are perceived as unfair and opaque

Workers consistently describe rostering decisions as being made by people who will never work those hours and who are disconnected from the lived experience of shift work. Members perceive rostering

outcomes as unevenly distributed, with the same workers repeatedly bearing the burden of early starts, late finishes, weekends, and public holidays.

> *"A fairer rotation of early starts, late finishes, weekends, and public holidays is essential—the same people always seem to carry the heavier load."*
>
> *Rosters are often released without factoring in actual workload or staffing levels, resulting in last-minute changes at the port level that no one is available to fill.*
>
> *"Rostering is only for the operation. There is no thought of staff at all. Rosters get released without factoring loads, then last-minute changes have to be made. No one picks them up because we are always understaffed and the pressure is impossible."*

[redacted]eaving no time on workers' terms

For many members, the cumulative effect of fatigue, instability, and lack of control is a profound erosion of work-life balance. Workers describe a system where work dictates all aspects of life, rather than the other way around.

[redacted]ted

aligns with findings of the Fair Work Commission. In the Final Report [redacted]he Full Bench observed:

> *"[89] Material before the Commission suggests that roster instability and unpredictable hours adversely affect worker-carers, who require predictable schedules to manage caregiving responsibilities. On-demand flexibility, where employees are expected to be available at short notice, was noted to exacerbate job insecurity… particularly for part-time employees… leading to income insecurity and increased work-family conflict."*
> *(footnotes omitted)*

Similarly, the Senate Committee on Work and Care recognised the systemic nature of these problems and recommended measures to restore roster justice, the Committee recommended:

- To "restrict the use of low base hour contracts, which can be 'flexed up' without incurring any pay penalty for additional hours worked beyond contract, and ensure permanent part-time employees have access to regular, predictable patterns and hours of work. This could include implementing penalty rates for any hours worked over the contracted amount. For example, if an employee is contracted for 15 hours and their employer rosters them for more, they should be paid a penalty rate for hours worked beyond the contracted amount." (Recommendation 25)[redacted]
- "to require employers to give advance notice of at least two weeks of rosters and roster changes (except in exceptional circumstances) and genuinely consider employee views about the impact of proposed roster changes and to accommodate the needs of the employee." (Recommendation 21);
- "mandatory annual reporting of companies with over 20 000 employees in Australia to the Fair Work Commission on workplace practices to ensure roster justice and flexible working arrangements." (Recommendation 24)

## Recommendation: roster justice in the NES

The ASU recommends that the following provision be added to s.62:

***Arrangements for working hours***

*(5) An employer must provide an employee (other than a casual employee) predictable hours of work.*

*(6) In determining whether hours of work are predictable for the purpose of sub-section (5), the following must be taken into account:*

*(a) whether the employer has provided a regular pattern of work in writing, including the days of work and start and finish times;*

*(b) changes to the regular pattern of work are made on at least two weeks' notice and following genuine consultation of at least two weeks, including taking into [redacted]nt the employee's personal circumstances (including family responsibilities and caring arrangements);*

*(c) overtime payments are payable for all work performed outside the regular pattern of work; and*

*[redacted]e may refuse a roster change if it is unreasonable regarding their [redacted]nstances.*

*[redacted]ute about sub-section (5), the status quo remains until the dispute is determined.*

## Work intensification

ASU members report enormous amounts of work intensification. Workers face outsourcing, labour hire, downsizing and redundancies on a frequent basis. Work is never stable or constant. It is always changing, and workplaces are asking more and more of individuals. In a 2025 survey of South Australian ASU members:

- 50 % of people 'regularly (most weeks)' or 'sometimes' work more than their agreed hours each week;
- Almost 80 % of respondents' workload had 'increased significantly' or 'increased somewhat' over the last two years;
- Only 15% of roles are filled quickly when a coworker leaves. Almost 60% were filled, but after a significant delay while almost 30% were left vacant long term, or never filled at all; and
- Over 70% worked through lunch breaks and tea breaks.

Some respondents told us:

*"The lines get blurred too often and workloads increase silently often. There is an unsaid culture of not saying no or setting boundaries as you don't want to be seen as not aligning with our organisational value of 'Teamwork'"*

*"Positions aren't being filled which means everyone else has to pick up the workload"*

*"Workload has been shifted from other departments to ours. So workload has increased but hours to complete it have not.*

***"Unrealistic expectations. Constant interruptions. Made to feel that we are the issue and not productive enough. Very demoralising."***

ASU members report that there is an increasing expectation of work being required to be done, no matter what hours of work a person works. Roles are often not back-filled when a person leaves, but there is no management of prioritising, or work not being done. Workers are told that they just need to muck in, or to do it for their clients or customers.

While the right to disconnect has been a helpful tool, it does not sufficiently address a worker's ability to refuse to work additional hours. Some members report to us that when they work their paid number of hours per week, they are made to feel like they are not a team player, that they are incompetent or that they are the issue. Workers need a clear right to be able to say, "You are asking too much of me".

### Recommendation: a right to refuse additional hours due to work intensity

[redacted] amending section 62(3) as follows:

> *"(ba) whether the additional hours are a result of work intensification;"*

## Annual leave and personal leave while on Long service leave

[redacted] ong service leave schemes are operating to enable workers with long [redacted] le to take a long rest (as opposed to needing to accrue long service

At some schemes, when a worker takes long service leave through the scheme, they are placed on "leave without pay" at their employer. While this is technically true in the sense that the worker is away from the employer without being paid (because the scheme is making payments), it is not true that they are not employed. However, a gap has occurred where some employers are not accruing annual leave and personal leave while the worker is accessing long service leave through the scheme. If the worker was on any other paid form of leave from their employer, they would continue to accrue both annual and personal leave.

This anomaly should be fixed.

### Recommendation: ensure accruals while on portable long service leave

The ASU recommends that the NES be amended to ensure that annual leave and personal leave continue to accrue whilst a worker is accessing long service leave through a portable scheme.

# 2. Promoting health and dignity

## Medical Certificates [redacted]

Section 107(3) of the FW Act outlines the circumstances in which evidence is required to be provided by an employee to an employer in order to justify the specific type of leave the employee is taking.

For paid personal/carer's leave, evidence that would "satisfy a reasonable person" is required to take the leave because the employee is not fit for work because of a personal illness or personal injury, or to care for someone who is ill, injured or experiencing an emergency.

Nowhere in the FW Act does it require that an employer require a medical certificate to prove that an employee is not fit for work. Yet ASU members report that employers seek medical certificates as

proof of illness or injury, even for a single day of sick leave. This is backed up by reports quoting the Australian Chamber of Commerce and Industry.[12]

The routine insistence on medical certificates imposes unnecessary and unreasonable burdens on workers. In response to the cost, access and public health risks associated with attending medical appointments while unwell, workers have increasingly turned to online and telehealth medical certificate providers. These services allow employees to obtain medical advice and certification without leaving home, reduce the risk of transmitting illness to others, and are often more affordable than in-person consultations. For many workers, particularly those with short-term or acute illnesses, online providers represent a practical and reasonable way to obtain evidence that would satisfy a reasonable person for the purposes of section 107 of the FW Act.

[redacted]rs report that employers increasingly subject certificates obtained through online providers to heightened scrutiny, including demands for additional documentation that go beyond the statutory evidentiary test. By way of example, Virgin Australia advised the ASU in correspondence that:

> *[redacted]r has submitted a medical certificate issued by an online medical [redacted]t offers both an asynchronous request service and a consultation with [redacted] Virgin Australia may seek to verify that the latter occurred. A simple [redacted]nsultation took place is to request a receipt of the service used [redacted] however we would be prepared to accept another form of evidence that would satisfy a reasonable person if a receipt is difficult to obtain."*

This position demonstrates a significant expansion of employer oversight into the medical consultation process itself. While framed as a verification exercise, the practical effect is to require employees to disclose financial records and details of their interaction with health providers in order to access a statutory entitlement. Such requirements are not contemplated by the FW Act and risk shifting the evidentiary threshold well beyond what is required to satisfy a reasonable person.

**ASU case studies** demonstrate the unreasonable and punitive manner in which medical certificate requirements are being applied in practice. The names have been deidentified.

1. Aran, employed by an aviation ground handling company, was told that despite following the employer's leave policy, he was required to provide medical certificates because the employer considered the "ratio of medical certificates to statutory declarations" he had submitted to be "suspicious". No objective criteria or explanation was provided to justify this assessment.
2. Lena and Miles, who work at the same private health insurance call centre, were informed that because they had [redacted] threshold of personal leave taken without evidence, they would be required to provide medical certificates for all future absences. This requirement extended even to part-day absences, including occasions where they left work 30 minutes early with their manager's approval. Both workers were placed on Performance Improvement Plans (PIPs) and advised that unless they retrospectively provided medical certificates for each absence, they would receive disciplinary warnings for failing to comply with company policy.

[12] https://au.finance.yahoo.com/news/aussie-employers-call-for-public-holiday-change-and-crackdown-on-growing-sick-leave-trend-abuse-it-230312317.html

> In Miles' case, the PIP included a target of 100 per cent attendance and zero unplanned leave—an objectively unreasonable and unattainable standard. Miles was subsequently informed that, due to having been ill with influenza for one week, he could not pass the PIP, despite meeting all other performance indicators.

These examples illustrate how the inappropriate use of medical certificate requirements can operate as a form of surveillance, discipline, and deterrence, rather than as a reasonable evidentiary safeguard. They also demonstrate how employer practices have drifted significantly beyond the intent of section 107 of the FW Act, undermining both employee wellbeing and the efficient functioning of the public health system.

Obtaining a medical certificate is not a simple process. It requires being well enough to attend a [redacted]g which time the person is potentially spreading further illness to other patients). Doctors very rarely entirely bulk-bill patients. The average out-of-pocket fees for a short consultation are $39,[13] although it can be much more. Even if doctors bulk-bill patients (partly or wholly), this represents an impost on public money that is not necessary. Moreover, it is a waste of [redacted]person as ill or injured in order to access paid time off.

## Recommendation: limit [redacted]requirements of medical certificates

[redacted]7(3) be amended such that "evidence that satisfies a reasonable [redacted]wo consecutive days' absence. Further, that where an employer requires evidence in the form of a medical certificate, that it is at their expense, not the employee's expense.

## Reproductive leave

Menstruation, IVF, pregnancy, pregnancy loss, perimenopause and menopause affect just shy of half the workforce.[14] Yet these reproductive events have largely remained hidden, through stigma, through women's fight for equality, through discounting belief they occur and an employer preference for the 'ideal worker'.[15] In addition, chronic illnesses or conditions related to reproductive organs, such as endometriosis or polycystic ovary syndrome (PCOS), Benign Prostatic Hyperplasia (BPH) can cause physical pain, inconsistent need for rest pauses, embarrassment or shame from unexpected side effects.

The result of keeping these everyday life occurrences hidden has led to:

- Absenteeism (time away from work for treatment and recovery), including an over-reliance on existing types of leave, including paid sick leave or annual leave;
- Presenteeism (workin[redacted]eing unwell, or unproductive);
- Perpetuated shame at an individual and societal level;
- Lost productivity through turnover and replacement costs.

Women have told us:

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13 https://medicalcostsfinder.health.gov.au/service/?id=Q91891&mode=OH&specialty=019999#:~:text=Typical%20costs,Patients%20typically%20paid%20$39

14 ABS 6202.0 Labour Force, Australia. Table 1. Labour force status by Sex.

15 For example, Joan C. Williams (2000), Unbending Gender: Why Family and Work Conflict and What To Do About It.

*"I would have definitely benefited from leave for fertility treatment. The treatment plan was so meticulously timed with injections having to be done at certain times. The logistics were hectic."* (Mother of two, Qld)

*"The first day or two of my periods lately are a complete write off…painful, heavy etc. I can't imagine being in an office on those days."* (Woman, early 40s, Qld)

*"By the time you see the specialists and then get tests and scans done, it's a day, easy. Then personal leave can be retained for sick days."* (Woman undergoing IVF, Qld)

One of the workers at the Queensland Public Service (who has the entitlement to paid reproductive leave) said:

[redacted]*y recently, which was such a relief as I had slept only two hours the night before (cramping and extremely heavy cycle) and I would not have been able to carry out my duties effectively. I had minimal sick leave balance so if not for that, I would have worked and performed poorly and further damaged my health by battling through when I should be resting. Driving after no sleep is also dangerous."* (Woman in perimenopause, Qld)

[redacted]*awkward when I need to change my tampon every 1-2 hours. I've had* [redacted]*and its horrible sorting yourself out in restrooms, leaving your desk constantly, or worrying you smell of menstrual blood."* (Woman, early 40s, Qld)

In those circumstances, having reproductive leave would enable the worker to let their boss know they need to take some reproductive leave and go home, limiting shame and embarrassment, but being able to meet their needs as well.

### Recommendation: paid reproductive leave

The ASU recommends that the NES be expanded to include 10 days of paid reproductive leave.

## Broaden definition of immediate family

Section 12 of the FW Act defines immediate family as:

*(a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the person; or*
*(b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the person.*

This definition is based upon historical notions of the nuclear family. Families, including immediate families, are much broader than [redacted]. It does not reflect the realities of working families, which are much more inclusive and nuanced. The narrow definition must be amended to ensure that workers can properly care for all of their family when needing to take personal/carer's leave or compassionate leave, or family and domestic violence leave.

The current definition contains the following shortcomings:

- a person who is in a relationship but not married or de facto cannot take care of their partner;
- a person's former spouse, de facto or partner (especially in the situation where the former spouse, de facto or partner is also a parent to their child/ren);
- it is not clear that step-children or children in foster care are included;

- traditional kinship relationships of equivalent significance.

This is unacceptable in our society and undermines progress we have made to be more inclusive and aware of each other's differences.

**Case study: ASU member and staff member**

Take one of the ASU members and employees, who is in a same sex relationship, with a daughter from a previous relationship and who has recently fostered a baby with his partner.

In the event that his daughter's mother needed assistance in an emergency, he would not be entitled under this definition to take personal/carer's leave. Yet his daughter's mother is [redacted]mediate family connection. They have a co-parenting relationship, and his daughter needs to know that she can count on her father to help her mother if needed.

Moreover, his foster son, while in daycare, is still a baby and is therefore frequently exposed to everyday childcare illnesses, which require him to take carer's leave to care for his foster [redacted]ition does not clearly include foster children, whether in a person's [redacted]mporarily.

[redacted]society that we are able to care for our family – no matter what the

In addition, Aboriginal and Torres Strait Islander people have a much wider concept of family than traditional concepts of families. Kinship relationships can go beyond mere bloodlines and relationships and can extend to socially recognised relationships. Kinship relationships are not necessarily based on a hierarchy of relationships, but built around connection and mutual obligations.

In that context, when a death (of a person, or a loss of country or cultural connection) occurs, it has community-wide impacts. Kinship structures feed into Sorry Business/Sad News obligations (such as mandatory attendance at ceremonies and funerals) and can include travelling to and attendance on country. The current entitlement to two days compassionate leave does not contemplate the breadth of kinship and cultural responsibilities. To foster our country's proud cultural heritage, we must allow those cultural traditions to continue. No one should lose pay because they are in mourning.

### Recommendation: broaden the definition of immediate family

The ASU recommends that the definition in s. 12 be amended to specifically refer to partners, former partners, stepchildren [redacted]care. In addition, the definition be amended to recognise kinship relationships for Aboriginal and Torres Strait Islander people, and compassionate leave be expanded to 10 days per annum for Sorry Business/Sad News.

# 3. Security in the digital age

## Annual leave

Paid annual leave has been a feature of the Australian industrial relations since the mid-1930s, when the federal arbitration tribunal first awarded one week of paid annual leave to a group of printing

industry workers. Over the subsequent 40-odd years, the right to paid annual leave increased to four weeks per year.

Now, almost a century later, it is time to increase paid annual leave again. Paid annual leave was about protecting workers from overwork in an industrial economy. We are now in the digital age, where work is not only continuous across the year, it is continuous throughout the day. Work and personal lives are intertwined in a way never seen before. Many ASU members carry their work around in their pocket, able to access work via apps, the web, emails and on the phone, along with never-ending notifications about something else to add to their to do list. The introduction of the right to disconnect is a welcome start to normalising workers 'switching off', but that does not countenance the circumstances where workers cannot switch off: because they have to find out when work is next available for them, to remind their employer of their availability, to do training, to [redacted]orld around them to understand the impact on their work.

Paid annual leave has always been a health and safety measure, and it continues to be. Workers need rest and recreation, without loss of pay or incurring debt. When burnout, fatigue and stress are commonly reported by workers, the scales must be balanced. The long-term productivity, reduced [redacted]f energy and enthusiasm are benefits reaped from paid annual leave.

[redacted]onomic benefits to workers going on holiday – with the opportunity [redacted]ed during holiday time. However, there is also a proliferation of fragmenting annual leave. Members report of difficulties taking annual leave in 'blocks' of time – either because the employer won't approve it, or the workload is too much, or because doing so will leave their colleagues with more work. The fragmentation of annual leave can dilute its positive effects.

With more annual leave, workers will have more of an opportunity to take breaks in a block – but more importantly, to recover from the fast-paced world of instant communication and non-stop information to contribute to the workplace long-term and productively.

### Recommendation: increase annual leave to five weeks

The ASU recommends that s.87(1) is amended to increase paid annual leave from 4 to 5 weeks; and from 5 to 6 weeks for shiftworkers who qualify for an additional week of annual leave.

## Extended Notice Period for AI-related dismissals

Artificial intelligence (AI) is becoming increasingly normalised in Australian workplaces. Alongside the deployment of AI comes a number of risks for workers. These include but are not limited:

- Outsourcing of work t[redacted]g to redundancies or reduced hours because human workers are being overtaken by AI;
- Workplace surveillance: impacting workers' privacy and leading to a degradation of industrial rights;
- Discrimination in hiring and firing decisions: where AI systems based on discriminatory models are used. Most impacted by this are women, migrant workers and workers of colours, workers with disabilities, as well as workers who have not attended university or private schooling;
- De-skilling and job fragmentation: as AI systems undermine secure work and entry level jobs;

- OHS issues: associated with more surveillance and AI set targets and key performance indicators that do not understand human or circumstantial limitations; and
- AI being used to undermine union organising and create general polarisation in society.

These are not abstract risks: WiseTech announced thousands of jobs to be made redundant, even though the organisation is financially sound; the Commonwealth Bank announced redundancies in its workforce because of the introduction of AI;[16] Telstra is doing the same.[17] The global response has outpaced Australia, so far. But that is rapidly changing.

ASU members, especially in the administrative and clerical industry are already experiencing the negative consequences of the deployment of AI at work. Without industrial protections, the impact on this cohort of workers, who are predominantly women workers, will be devastating. Consider the [redacted]ns of minute-taker, planner, rostering, transcribing, that are competently performed by human-beings. These are functions that are being overtaken by AI.

Additionally, for our community sector and local government sector workers who provide core supports to Australians who need them, AI can de-humanise them and their clients and undermine [redacted]'s needs cannot be shoved into an algorithm to have a machine [redacted]support requirements. They are blunt systems that cannot account [redacted]rovision and skills these workers have.

[redacted]ant to embrace new technologies. ASU members take pride in their important work. New tools provide the opportunity to do that work more efficiently, creating more time to plan, think through complex problems, and undertake valuable work based on social interactions. AI creates the opportunity to increase productivity, leading to greater equality. This will only be the case with proactive regulation and safeguards.

A digital just transition is needed that facilitates access to tools, training and upskilling for the current workforce, not just future workforces. Workers of today and the future need to have quality jobs guaranteed.

Workers must have a say over the implementation of AI in their workplaces. Better transparency and consultation provisions must be implemented and enforced. The risk of AI misuse is rife, and workers should not have to bear the consequences of an employer's desire to cut corners or operate in an AI-world without guardrails such as human oversight.

To encourage employers to better consult with their workforces, and to provide safeguards for workers at risk of losing their jobs, there should also be an increase to the paid notice period for workers with jobs lost because of AI. This must be at least 6 months, to enable workers to have time to undertake training to upski[redacted]within the organisation, and look for new work.

All of the minimum standards outlined in the NES also need to be reviewed to ensure it is fit for purpose in the world of AI. This should be done in consultation with unions.

## Recommendation: special notice periods for AI-related dismissals

The ASU recommends that s.117(3) be amended by adding a new paragraph (c) in the following terms:

[16] https://www.abc.net.au/news/2026-02-25/wisetech-job-losses-losing-2000-over-next-two-years-coding-era/106387486
[17] https://www.abc.net.au/news/2026-02-11/telstra-axes-600-roles-in-redundancy-round-outsourcing-to-india/106331708

*"(c) then increase the period by six months if the employment is terminated because of the introduction of artificial intelligence-related technology."*

## Notice of termination for casual employees

Section 117 of the FW Act is found within Division 11 of Part 2-2 – The National Employment Standards. Through the operation of section 123(1)(c), section 117 does not apply to a casual employee.

Accordingly, a casual employee is not entitled to written notice of the termination of employment (s.117(1)) or to any period of notice (s.117(2)).

Long-term casual employment is more common than the archetype of a casual worker who works [redacted]ust 2020 (still during the pandemic and the provision of JobKeeper payments), the APH reported that around 36% of casual workers had been with their employer for less than 12 months.[18] Reversing that statistic indicates that more than 60% of casual workers had been with their employer for more than 12 months. Moreover, in the most recent ABS data,[19] 90% of casual [redacted]g with the same employer in 12 months.

[redacted]sual workers (who make up about 20% of the workforce) are long-[redacted]bility and consistency for their employers. It also indicates reliability [redacted]work with the same employer. Certainly, community and personal care workers – a large proportion of ASU members – have the highest rate of casual employment for an occupation (23%).[20] These workers are committed and dedicated to their clients and ensuring the best health and personal outcomes for the people they serve. Those who assist the most vulnerable parts of the community are in it for the long haul.

And yet, legally, they can be sacked on an hour's notice.

In the digital age, rosters are frequently sent to casual employees via 'rostering apps' such as ShiftCare, Care Master, Deputy, Roster Elf or Tanda, or through WhatsApp groups. It is not uncommon for employers to simply drop someone from the "app" or from the roster or take them "off the books". Because they are casually employed, they have no statutory right to notice, let alone an amount of notice.

**Case study: Swim instructor**

One of our members worked as a casual swim instructor for over 5 years, with the same employer. She had worked the same or similar shifts, week in, week out for years. However, she raised an issue around underpayment. She was told that she would not be getting any shifts any more, and s[redacted]'t.

After 5 years of dedicated employment with this employer, she was not given any notice of the end of her employment. Had she been permanently employed, she would have received 4 weeks' notice (or payment in lieu).

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18 https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Statistical_Snapshots/2021-22/TrendsCasualEmployment

19 https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release#casual-employment

20 https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release#casual-employment

She wasn't, she was simply cut off from her livelihood without warning or consideration.

This is an issue for casual employees, who work regular and systematic hours, that they are not afforded fair warning of the end of their employment. There are other rights in the FW Act for casuals with regular and systematic service, such as parental leave and minimum employment period for unfair dismissal,[21] so there is precedent to provide special circumstances for casual employees who have been employed on a regular and systematic basis.

## Recommendation: notice for long term casuals

The ASU recommends that s.123(1)(c) be amended as follows:

*"(1) This Division does not apply to any of the following employees: …*

*(c) a casual employee (unless they are a regular and systematic casual); …"*

## Union Information Statement

In their article "Promoting Secure Work: Two Proposals for Strengthening the National Employment [redacted] rlesworth wrote about providing an information statement for all [redacted] and conditions of employment. The academics conclude that this will [redacted] nderstanding about their rights and entitlements.

The ASU submits that unions are best place to provide workers with an understanding about their rights and entitlements. They offer tailored advice with respect to a person's specific industry, workplace and individual rights. They organise particular workplaces so as to keep employers accountable. They can do this through campaigning, legal avenues, and being part of the workplace.

However, union density remains low, at 13.1%.[23] The number of individual grievances at the Fair Work Commission is increasing exponentially, largely due to self-represented individuals who make claims without the benefit of sensible advice. The calls to the Fair Work Ombudsman increase year on year. Union members earn on average more than $200 per week more than workers who are not members.

Yet awareness of the role of unions is low. Particularly with workers in small businesses, or with managers who have low or negative perceptions of unions.

Workers do not need another piece of paper which says it contains their rights and entitlements, but which would inevitably contain so many caveats that it would render it meaningless. In our experience, workers need to know who to contact, who to call, when things go wrong at work.

There is also a common misconception that "there is no union for me". There is a union for every industry, for every occupation, for every worker.

An union information sheet which explains who to contact or call (for example, the ACTU) so that they can be directed to the most appropriate union for that workplace. This does not force or compel the worker to join the union, so it does not offend freedom of association laws in any way. It

[21] S.67, s.384,
[22] (2023) 36 *Australian Journal of Labour Law* 232
[23] https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/trade-union-membership/latest-release.

is simply about educating workers that there is help, support and assistance if they need it, or want to learn more.

### Recommendation: Union Information Statement

The ASU recommends inserting new sections 125C and 125D which mirrors the legislative drafting in relation to the Fair Work Information Statement and the Casual Employment Information Statement.

## Clarification of redundancy entitlements

Section 119(2) of the FW Act provides that an employee who is made redundant after 10 years' service receives less redundancy pay period than a person with 7, 8 or 9 years' service. A person who has been with their employer for, say 15 years, is entitled to 12 weeks' redundancy pay, but a person who only five years of service is entitled to 10 weeks: only two weeks' pay less than a person who has made triple contribution to their employer.

The NES for redundancy – found in s.119 – is often called up or replicated in enterprise agreements.

raumatic event for a business, as well as an employee. However, the as long endorsed that employees who lose their livelihood, through compensated for the unexpected loss of future income for an indeterminate time.[24]

The amount of redundancy pay has always been linked to an employee's length of service. This is to reflect that employees with longer service at a single employer are more likely to stay employed with that employer, such that the redundancy event may have a more dramatic impact than someone with shorter service. It also reflects the amount of time that might be taken to find alternative employment, and that other employers may not be persuaded to hire someone with experience at a single employer.

The other reason for redundancy pay is a broadly economic one: a worker who is able to 'bridge' the gap between jobs by way of redundancy pay is less likely to rely upon the taxpayer funded welfare system (such as JobSeeker).

The reason that an employee with 10 or more years' service is entitled to less redundancy pay is an archaic one. In the TCR decision, the Commission discounted redundancy pay for long-term employees because they would also be paid long service leave. Long service leave in federal awards was only accessible after 10 years' of service. However, this no longer recognises that state-based legislation provides for long service leave before 10 years' of service, and also that long service leave is an entitlement as a consequ he current situation also does not consider the circumstance where an employee has more than 10 years' service, has taken long service leave, and is then made redundant. The situation outlined above, and the inherent unfairness of it, arises.

Accordingly, this anomaly in the NES ought to be rectified.

### Recommendation: increase redundancy pay for long service employees

The ASU recommends that the final row in table in s.119(2) of the FW Act be amended as follows:

| | | |
|---|---|---|
| *10* | *At least 10 years* | *20 weeks* |

[24] For example, the TCR Case (1984), Re Redundancy Case (2004).

## Calculating redundancy pay where an employee is on a temporary return to work arrangement.

Section 119 of the FW Act established a statutory entitlement to redundancy pay for eligible employees whose employment is terminated due to redundancy.

Section 119(2) provides that redundancy pay is calculated by reference to the employee's "base rate of pay for his or her ordinary hours of work." The term "base rate of pay" is defined in section 16 of the Act as the rate payable to the employee for their ordinary hours of work, excluding incentive-based payments, bonuses, loadings, monetary allowances, overtime, and penalty rates.

The NES redundancy provisions are intended to provide income protection and financial cushioning to employees who lose their employment through no fault of their own. They are minimum standards designed to operate fairly and consistently across the workforce.

[redacted] of section 119 does not adequately address circumstances where an [redacted] been temporarily reduced under a return-to-work arrangement.

[redacted] uced hours at the time of redundancy due to a temporary [redacted] ncluding (but not limited to):

- Pregnancy
- a graduated return following parental leave;
- reduced hours during recovery from illness or injury;
- temporary flexible work arrangements under the NES or workers' compensation frameworks.

In these circumstances, the employee's reduced hours do not reflect a permanent change to their employment status, classification, or substantive role. Rather, they are a temporary adjustment designed to facilitate recovery, workforce participation, and the exercise of statutory rights.

Despite this, the current NES framework allows redundancy pay to be calculated by reference to the reduced hours worked at the time of termination. This can result in significantly lower redundancy payments for employees who are already in a vulnerable position due to caring responsibilities, health issues, or workplace injury.

Employees who access parental leave, workers' compensation, or flexible working arrangements are exercising rights conferred by the Act and related legislation. Allowing redundancy pay to be reduced because an employee [redacted] reduced their hours in order to exercise those rights undermines their practical effectiveness. It creates a financial penalty attached to taking parental leave, returning gradually from illness or injury, or seeking flexible work arrangements.

Such an outcome risks discouraging employees from exercising statutory rights and is inconsistent with the objects of the Act, including:

- providing fair, relevant, and enforceable minimum standards; and
- promoting social inclusion through workforce participation.

The NES should operate to protect, not erode, employees' entitlements during periods of transition and vulnerability.

The NES should be amended to expressly recognise that temporary return to work arrangements do not redefine an employee's substantive ordinary hours for redundancy purposes.

The proposed amendment would

- align redundancy pay with an employee true employment relationship,
- Minimise financial disadvantage arising from temporary arrangement
- reinforce the integrity and fairness of parental leave, workers' compensation, and flexible work rights.

### Recommendation

The ASU recommends amending s.119 of the FW Act to include a provision to the effect that: For the period of service during which the employee was employed on a part-time basis under a return-to-work arrangement, redundancy pay shall be calculated based on the employee's base rate of pay for their ordinary hours of work at the full-time rate applicable to the employee's position.

## 4. Enforcement with force

### Presumed serious contravention

According to section 44 of the FW Act, an employer must not contravene a provision of the NES. Section 44 is a civil remedy provision, meaning that a penalty can be ordered when an employer contravenes it (s.546).

Section 557A outlines circumstances of serious contravention, and item 1 of the table in s.539 identifies that the maximum penalty, for a serious contravention is ten times the maximum penalty for an ordinary contravention.

The NES is a fundamental cornerstone of Australia's industrial framework. As the Explanatory Memorandum to the FW Bill stated, "Along with the National Employment Standards, modern awards ***will form a safety net for employees*** in the federal workplace relations system from 1 January 2010."

The NES also deals with matters which are notorious and well-known. To not comply with the NES should be considered a serious contravention of the law. It should be recognised that a contravention of the NES indicates a level of wrongdoing that is an anathema to industrial relations. Employers should be seriously punished for contraventions of the NES. At the very least, employers should be deterred from contravening the NES.

Accordingly, the ASU recommends that a contravention of the NES be presumed to be a serious contravention. The presumption can be rebutted by an employer arguing pursuant to sub-s.557A(7) that the contravention is not a serious contravention.

### Recommendation: contraventions of NES are serious

The ASU recommends inserting new sub-section (3) in s.557A as follows:

> *"(3) A contravention of s.44 is presumed to be a serious contravention."*