

**SUBMISSION TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON EMPLOYMENT,
WORKPLACE RELATIONS, SKILLS AND TRAINING**

Inquiry into the Operation and Adequacy of the National Employment Standards

Submitted by: Working Women's Centre Australia (WWCA)
In collaboration with the national Working Women's Centre (WWC) Network

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Acknowledgments

We acknowledge the Traditional Custodians of the lands on which we live and work across Australia. We pay our deep respects to Elders past and present for their continuous custodianship and care of the land, sea and waterways. This was and always will be unceded land.

We also acknowledge the many women subjected to gender-based violence, workplace exploitation and insecure work with whom we work, and whose lived experiences inform this submission and our ongoing advocacy for systemic change.

Working Women's Centre Australia acknowledges the contribution of Working Women's Centre NSW to this submission. Portions of this submission draw on analysis, research and drafting originally developed by WWC NSW in its own work on National Employment Standards reform. We are grateful for their generosity in sharing their expertise and materials, and for their ongoing collaboration within the national Working Women's Centre Network.

About Working Women's Centre Australia and Working Women's Centres

Working Women's Centre Australia (WWCA) is the national peak body for Working Women's Centres (WWCs) across Australia. WWCs provide crucial legal, education, and advocacy services to women who are experiencing workplace issues, with a focus on sexual harassment and discrimination. Legal advice and representation for working women is free, confidential, and trauma-informed.

Centres also undertake important work to prevent sexual harassment and discrimination in the workplace by providing workplace training, advocacy, and community education to assist employers to create safe workplaces.

Working Women's Centres have always worked in partnership with the wider women's movement, trade unions, employers, universities, all levels of government, and legal providers to support women who fall through the cracks. Working Women's Centres often partner to provide a gendered lens to ensure women's voices matter.

This submission is informed by de-identified client experiences and systemic advocacy undertaken by WWCA in collaboration with the national WWC Network.

Executive Summary and Overview

The National Employment Standards (NES) are intended to provide a universal, enforceable safety net of minimum employment conditions that apply regardless of bargaining power or industry coverage. While the NES has improved baseline protections, minimum standards must continue to reflect the contemporary challenges faced by women and marginalised workers.

The NES continues to be structured from an outdated model of full-time, continuous employment that evolved from the Harvester Decision¹

This foundational principle of our national wage system no longer adequately recognises the proportion of households that are dependent on two incomes, the increases to costs of living (specifically housing) and the structures of modern families. The Harvester Decision reflects the invisible and unacknowledged reliance on unpaid labour, and the domestic servitude of women not in paid work, to enable the full-time worker to work.

¹ <https://www.fwc.gov.au/about-us/history/waltzing-matilda-and-sunshine-harvester-factory/harvester-case>

Consequently, it fails to accommodate the gendered nature of unpaid caring responsibilities, the impact of reproductive and other health needs, cultural and religious obligations, experiences of violence, and the structural impacts of insecure and casual work.

In practice, WWCs see that many women experience the NES as a ceiling rather than a floor, a narrow set of entitlements that do not reflect the realities of working life and are often inaccessible without risk.

Where the NES relies on employer discretion, narrow definitions or rigid eligibility thresholds, it does not operate as an effective safety net, and risks undermining the very objects of the Fair Work Act of which it is part, including gender equality, social inclusion and workforce participation.

To meaningfully promote the objects of the Fair Work Act, the NES must evolve in step with modern working life. Where the NES fails to recognise predictable, gendered and unavoidable life events, it undermines both workforce participation and workplace equality.

This submission is not intended to be exhaustive. It prioritises a targeted set of reforms to the National Employment Standards that address structural gaps affecting working women and gender diverse people, particularly those vulnerable to insecure work, unpaid care responsibilities and intersecting systemic disadvantage.

WWCA recognises that the effectiveness of the NES depends not only on the existence of minimum entitlements, but on whether those entitlements are clear, coherent, accessible and enforceable in practice. For workers with low bargaining power, insecure employment or limited legal literacy, rights that cannot be realistically accessed or enforced do not function as a meaningful safety net. Reform of the NES must therefore address structural and procedural barriers to enforcement alongside substantive gaps in entitlement.

Throughout this submission, we reference women however we submit that non-binary and gender diverse workers also experience gendered workplace harms and structural inequality and our submissions are designed to cover those workers too.

Case studies referenced throughout this submission are drawn from the direct client work and systemic advocacy of Working Women's Centres across Australia and will be de-identified to protect confidentiality.

Gaps in the NES Safety Net Framework

The NES is intended to provide a floor of rights that applies to all national system employees. However, access to those rights is uneven and often weakest for workers in non-standard and precarious employment arrangements.

Women, First Nations workers, migrant workers, young workers, LGBTQIA+ workers, and workers with disability are over-represented in casual, part-time and insecure work². These workers are more likely to experience exploitation while simultaneously being excluded from, or unable to practically access, key NES entitlements³.

A safety net that provides the least protection to those most likely to fall is not functioning effectively, nor to its intended objective and purpose.

Women are disproportionately impacted due to the significant gender disparities that are present across awards and industries. The Workplace Gender and Equality Agency (WGEA) 2024-25 annual report indicates that our national gender pay gap sits at 21.8% and that for every dollar earned by a man, a woman earns seventy-eight cents.⁴

Wages, entitlements and working time protections are demonstrably more generous in male-dominated industries, reflecting the historic undervaluation of 'feminised' work. This is particularly evident in the community and social service sectors, where the majority of workers are women in

² Workplace Gender Equality Agency, *Status of Women Report Card 2024*. <https://genderequality.gov.au/status-women-report-cards/2024-report-card>

³ Fair Work Ombudsman, *Annual Report 2024-25 – Media Release* (young workers identified as a high-risk cohort and over-represented in reports). <https://www.fairwork.gov.au/newsroom/media-releases/2025-media-releases/october-2025/20251029-annual-report-2024-25-media-release>

⁴ <https://www.wgea.gov.au/sites/default/files/documents/WGEA-Annual-Report-24-25.pdf> - pg 6

'non-standard' employment arrangements. The recent Fair Work Commission decisions seeking to rectify these disparities reveal the extent of gendered undervaluation⁵.

To establish an equitable floor of rights for working women, the NES safety net needs to be expansive enough to dispel the persistent gender disparity within the modern award system.

Paid Reproductive Health Leave

It is well established that chronic reproductive health issues are prevalent among Australian women and have a significant detrimental impact on labour force participation. One in seven women have endometriosis, one in ten have Polycystic Ovary Syndrome (PCOS) and 90% have experienced 'debilitating' period pain.⁶ Women are withdrawing from the labour market years before they planned to, with less retirement savings, because of a lack of workplace support to address the symptoms of perimenopause and menopause, in particular⁷.

In 2024, Share the Dignity's Big Bloody Survey highlighted the economic and workplace impact of menstruation across Australia. Their nation-leading report found that the total dollar figure we can attribute to missed workdays due to periods alone is \$9.6 billion annually.⁸

Reproductive health is a workplace issue. Menstruation, endometriosis, fertility treatment, pregnancy loss, abortion, menopause and perimenopause are common, predictable aspects of working life for many women and people who can become pregnant. Despite this, the NES provides no dedicated entitlement to address reproductive health needs.

As a result, workers rely on personal leave, annual leave, unpaid leave or informal arrangements, often at significant financial and career cost. Many report concealing health needs due to stigma or fear of discrimination. This disproportionately impacts women in insecure or low-paid work who are least able to absorb income loss.

In 2024 The Queensland Government introduced 10 days of paid reproductive leave in addition to other leave entitlements. This was an important gender pay equity initiative of the government.⁹ In 2022 Spain introduced national paid menstrual leave. Japan introduced paid leave in 1947 and South Korea, Indonesia and Zambia already grant menstrual leave at a national level¹⁰

WWCA supports the Australian Council of Trade Unions' (ACTU) 2024 policy position calling for the inclusion of 10 days of paid reproductive leave in the National Employment Standards.

Recommendation 1: Include a new NES entitlement to 10 days of paid reproductive health leave, available to all employees including casuals, covering reproductive health-related conditions; capable of flexible use; not requiring detailed medical disclosure; and protected from adverse action.

Supporting Breastfeeding and Lactation at Work

Breastfeeding and expressing milk are recognised public health priorities and are critical to the health and wellbeing of women and children. Despite this, the NES contains no express entitlement to lactation breaks or access to appropriate facilities at work.

Women consistently report expressing milk in unsafe, unhygienic or degrading conditions, including toilets, cars or storage rooms¹¹. Others describe pressure to return to work earlier than planned, loss of shifts, or reduced hours due to breastfeeding needs.

⁵ Fair Work Commission, *Work value reasons – Aged Care Work Value Case* [2023] FWCFB 3500.

⁶ Gemma Beale and Sarah Mawhinney, *Suffering in Silence: Making the Case for Reproductive Leave in Australia* (Research Report, The Mckell Institute, June 2024) <https://mckellinstitute.org.au/wp-content/uploads/2024/06/Suffering-in-Silence-making-the-case-for-reproductive-leave-in-Australia-web-compressed.pdf>

⁷ Australian Human Rights Commission, *Speaking from Experience: A national study of women's experiences of menopause and perimenopause in the workplace* (Research Report, Australian Human Rights Commission, June 2023) <https://humanrights.gov.au/our-work/sex-discrimination/publications/speaking-experience-national-study-women's-experiences>

⁸ <https://www.sharethedignity.org.au/end-period-poverty/bloody-big-survey-2024>

⁹ https://www.forgov.qld.gov.au/_data/assets/pdf_file/0025/523627/reproductive-health-leave-directive-07-24.pdf

¹⁰ <https://www.sbs.com.au/news/article/spain-could-become-the-first-western-nation-to-grant-paid-menstrual-leave-how-does-australia-compare/vjznh2ca>

¹¹ Emma Burns and Zoi Triandafilidis, 'Taking the path of least resistance: a qualitative analysis of return to work or study while breastfeeding' (2019) *International Breastfeeding Journal*, reporting that many women returning to work in Australia had to express breast milk in improvised or inadequate spaces due to lack of supportive facilities.

The absence of minimum standards disproportionately impacts women in casualised and feminised industries, where access to flexible arrangements is limited and reliance on employer goodwill is high. This undermines workforce retention and forces women to choose between their health, their child's wellbeing and paid work.

Recommendation 2: Amend the NES to include a minimum entitlement to paid lactation breaks; access to a safe, private and hygienic space,; flexibility in the timing of breaks; and explicit protection from adverse action related to breastfeeding or expressing milk.

Donna* worked for several years as a white-collar professional in a small media company before taking parental leave. Upon her return, she was not provided with a private space to express milk and was required to attend the office at least one day per week, despite having worked entirely remotely during the pandemic.

While on parental leave, Donna missed her performance and pay review. When she raised this, she was told she would need to wait until the following year. She was also overlooked for a leadership opportunity, with her flexible working arrangement cited as a contributing factor.

Donna felt vulnerable, isolated and degraded by the treatment from her longstanding employer. She ultimately resigned. The matter later resolved with employer policy changes regarding breastfeeding and a payment of general damages.

Expanding Bereavement and Compassionate Leave

The NES compassionate leave entitlement is narrowly framed and does not reflect contemporary experiences of loss, care and trauma. It remains largely confined to immediate and traditional family relationships and discrete events, and does not adequately account for miscarriage, stillbirth, cumulative loss, blended and step-family relationships, kinship networks, or culturally specific mourning and caring practices.

Comparable jurisdictions provide more adequate minimum standards. For example, the United Kingdom provides up to two weeks of paid bereavement leave following the death of a child, and France provides between three and fourteen days depending on the relationship. Expanding compassionate leave entitlements would ensure the NES provides a meaningful minimum safety net and better reflects the lived realities of workers experiencing bereavement.

Many people experience deep loss and caring responsibilities through significant personal relationships that are not based on biological connection or formal legal status. These relationships may include partners outside of marriage, step-relationships, extended kinship systems, and other enduring relationships of care and interdependence. Limiting compassionate leave to narrow family definitions fails to reflect how people actually live, care for one another, and experience grief.

Women report returning to work prematurely following pregnancy loss or bereavement due to fear of income loss, job insecurity, or disciplinary action¹². These pressures exacerbate trauma, compound grief, and contribute to ongoing mental health harm and delay physical and emotional recovery.

The current framework also fails to recognise recovery from sexual violence as a legitimate basis for compassionate leave, despite the clear intersection between trauma, health, and work capacity. Survivors may require time away from work to access medical care, counselling, legal processes, or to recover from trauma. The NES does not currently accommodate this reality.

Recommendation 3: Amend the NES to broaden the definition of family to include partners, kinship relationships, and other significant personal relationships characterised by care, dependency or emotional connection; enable compassionate leave to be accessed flexibly over time; and include recovery from sexual violence as a recognised ground for compassionate leave, with evidentiary requirements aligned to the family and domestic violence leave framework, such as statutory declarations or documentation from support services rather than medical certificates.

Recommendation 4: Expand the minimum length of compassionate and bereavement leave beyond two days, which is insufficient for funeral arrangements, travel and cultural obligations.

¹² Melanie Keep et al, 'Experiences of Australian women on returning to work after miscarriage' (2021) *Community, Work & Family*

Murphy*, a casual worker in the amusement and recreation sector, was sexually assaulted by a colleague. As a result of the trauma, they were unable to attend several rostered shifts.

Because they were a casual employee and not in a familial or romantic relationship with the perpetrator, she was not entitled to paid family and domestic violence leave or compassionate leave under the NES. They were required to negotiate ad hoc leave arrangements with their employer, without any policy framework to rely on. They experienced financial loss due to missed shifts.

Cultural Leave

The NES does not adequately recognise the cultural obligations of First Nations workers. Cultural responsibilities such as Sorry Business, community obligations and participation in cultural governance are integral, non-discretionary aspects of life and identity, not personal preferences or recreational leave.

First Nations women, in particular, carry significant cultural and family responsibilities and are disproportionately impacted when workplaces fail to recognise these obligations. In the absence of a dedicated entitlement, workers are often forced to rely on annual leave, unpaid leave, or informal arrangements, placing them at risk of income loss, job insecurity, or disciplinary action.

Some modern awards provide limited unpaid ceremonial leave for First Nations employees. While this represents an important acknowledgement, unpaid leave entrenches inequality and does not provide meaningful support for cultural safety or workforce participation. The Australian Public Service provides a more appropriate benchmark, offering paid cultural leave to First Nations employees to meet these obligations.

Introducing a minimum paid cultural leave entitlement for First Nations workers would align the NES with Australia's commitments under the National Agreement on Closing the Gap, which recognises culture as a protective factor and a key determinant of social, economic and health outcomes for First Nations peoples¹³. It would also give effect to longstanding human rights recommendations recognising that the ability to practise culture is fundamental to equality and participation in work.

Recommendation 5: Amend the NES to include a minimum entitlement to paid cultural leave for First Nations employees, enabling workers to meet cultural obligations such as attending Sorry Business, Native Title meetings, and significant cultural ceremonies without financial penalty or risk of adverse action.

Leanne*, an Aboriginal woman working permanent part-time in the community services sector, was the only Aboriginal staff member in her team. Over a short period, several members of her extended family passed away. She sought leave to attend Sorry Business and fulfil her cultural obligations.

Some of the deceased did not fall within the Fair Work Act definition of "immediate family." When she raised her request, her manager responded, "You can't take Sorry Business leave for everyone that dies."

The refusal caused significant distress during a period of mourning. It also prevented her from fully participating in cultural practices that are integral to her identity and community responsibilities.

Religious Leave and Public Holiday Flexibility

Australia's system of public holidays reflects a narrow set of predominantly Christian observances. While these holidays are widely recognised and protected, they do not reflect the multicultural and multi-faith composition of the contemporary workforce.

Workers from non-Christian faith backgrounds frequently observe significant religious holidays that are not recognised as public holidays. Many report being required to take annual leave, unpaid leave, or negotiate ad hoc arrangements in order to observe important religious events, with some facing disciplinary consequences or stigma for doing so.

¹³ *National Agreement on Closing the Gap* (Australian Government, COAG, 2020), Outcome 1 and Priority Reforms — recognising culture as a protective factor and central to social and economic participation for Aboriginal and Torres Strait Islander peoples. <https://www.closingthegap.gov.au/national-agreement-closing-gap-2020-pdf>

This lack of recognition undermines inclusion, religious freedom and workforce participation, and disproportionately impacts women, who are more likely to carry caring and community responsibilities alongside religious observance.

The need for greater recognition of religious and cultural diversity in employment protections has been consistently identified by the Australian Human Rights Commission, including through national inquiries examining equality, cultural rights and participation in work.

Recommendation 6: Amend the NES to provide access to leave for significant religious holidays not otherwise recognised as public holidays; strengthen rights to substitute or flexibly observe public holidays in line with religious and cultural needs; and ensure workers are protected from adverse action when exercising these rights.

Outdated Definitions of Family and Care

The personal and carer's leave provisions under the NES allow leave where a member of an employee's immediate family or household requires care or support. However, the definitions of "immediate family" are narrow and do not reflect contemporary family structures or the reality of caring relationships.

Many workers provide personal care, support and assistance through relationships that are not based on biological connection, marriage or formal legal status, but involve ongoing responsibility and commitment. Older people who require support with medical, financial or daily living matters may not identify as "dependent", and those assisting them may not identify as "caregivers", despite clearly providing substantive care. Framing eligibility in terms of "dependency" risks mischaracterising these relationships and excluding genuine caring arrangements.

The current framework disproportionately impacts First Nations workers with kinship-based family systems, LGBTIQ+ workers whose primary caring relationships fall outside traditional family definitions, and migrant women who provide care to extended or overseas family members that are not captured by the current statutory definition of "immediate family". transnational caring responsibilities. Women are particularly affected given their disproportionate role in unpaid care.

The *Carer Recognition Act 2010* (Cth) defines a 'carer' as a person who provides personal care, support and assistance to someone who requires it because of disability, medical condition, mental illness, or because the person is frail and/or aged. This definition focuses on the substance of the care relationship rather than formal family status.

Notably, the NES right to request flexible working arrangements already relies on this broader concept of caring responsibility. There is no principled basis for permitting a request for flexible work to provide personal care, support and assistance, but denying access to personal/carer's leave in relation to the same relationship. Alignment would promote coherence and fairness within the NES.

The Senate Select Committee on Work and Care (Chapter 7) similarly identified that Australia lags comparable nations in providing inclusive and adequate care-related leave entitlements, including narrow definitions of family and care, limited flexibility, and exclusion of insecure workers. These limitations disproportionately impact women and workers in fragmented or casual employment.

Recommendation 7: Amend the NES to broaden the definitions of family and carer to include kinship and other significant personal relationships involving the provision of personal care, support and assistance, and to align personal/carer's leave provisions with the definition of "carer" under the Carer Recognition Act 2010 (Cth).

Superannuation Eligibility

Superannuation contributions are only guaranteed for workers under the age of 18 where they work more than 30 hours per week for a single employer. This threshold excludes many young workers at the beginning of their working lives.

The gender superannuation gap means that on average, an Australian woman will retire with 25% less than the average man.¹⁴ This gap is driven by several compounding factors, including the lifetime cumulative impact of the gender pay gap, greater likelihood of spending time outside of the workforce for caring, family and health responsibilities .

¹⁴ Super Members Council, *Closing the Gender Super Gap: Pay Super to All Under-18 Workers* (Research Report, 11 December 2025) <https://smcaustralia.com/reports/closing-the-gender-super-gap-under-18s>

Young women are significantly more likely than young men to work part time¹⁵. Despite making up 55% of workers under the age of 18, teenage girls make up just 35% of the under 18 workforce who are guaranteed super contributions. This carve out can cost young women as much as \$11,000 in their retirement.¹⁶

Recommendation 8: Remove the 30-hour threshold for superannuation eligibility for workers under 18 so that all young workers receive superannuation contributions regardless of hours worked.

Redundancy Provisions and Job Security

WWCA has identified several distinct ways in which the current redundancy framework disproportionately disadvantages women and carers:-

Small Business Exemption

The NES exempts small business employers from redundancy pay obligations, excluding a significant proportion of workers from income protection during involuntary job loss.

Women are over-represented in small businesses and service sectors¹⁷, meaning the exemption has a disproportionate gendered impact.

Recommendation 9: Remove the small business exemption so that redundancy pay operates as a universal minimum entitlement.

Marisol*, a full-time hospitality worker, was employed in a workplace with more than 20 staff. Most other staff were not full-time, although she did not know their precise employment status.

She was made redundant and received no redundancy payment. Although she may have had grounds to challenge the decision, she felt uncertain about her co-workers' employment status and discouraged from pursuing a claim, particularly given the small business exemption.

She was placed at a financial disadvantage compared to workers employed by larger businesses.

Susan* worked for her employer for 9.5 years. At age 58, she was made redundant and received five weeks' notice, accrued annual leave and long service leave entitlements.

As the sole income earner, with a husband unable to work due to degenerative illness, she faced significant financial insecurity. She works in a niche industry where re-employment may be difficult, particularly given age-related hiring bias.

Reduction After Ten Years' Service

Redundancy pay decreases after ten years of service, undermining protection at the point it is often most needed. The NES scale peaks at nine years then *drops* once an employee has completed ten years' service, due to the way long service leave is treated in the redundancy framework. Older women face compounded disadvantage due to age discrimination, limited re-employment opportunities and a heightened risk of poverty and housing insecurity, including homelessness, when employment is disrupted.¹⁸

Recommendation 10: Remove the reduction in redundancy pay after ten years of service.

Redundancy post-parental leave

The return-to-work guarantee under the NES is an important safeguard for workers returning from parental leave. In theory, an employee is entitled to return to their pre-leave position, or to an equivalent role if that position no longer exists.

¹⁵ Super Members Council, *Closing the Gender Super Gap: Pay Super to All Under-18 Workers* (Research Report, 11 December 2025) <https://smcaustralia.com/reports/closing-the-gender-super-gap-under-18s>

¹⁶ Industry Super Australia, *Superannuation and Young Workers* (2023); see also Australian Institute of Superannuation Trustees, *Gender Superannuation Gap*.

¹⁷ Workplace Gender Equality Agency, *Australia's Gender Equality Scorecard 2024-25* (WGEA, 27 Nov 2025) <https://www.wgea.gov.au/publications/australias-gender-equality-scorecard>

¹⁸ Australian Human Rights Commission, *Statistics about Older Australians* (2025). <https://humanrights.gov.au/human-rights-education/stats-and-facts-about-discrimination/statistics-about-older-australians>

In practice, Working Women's Centres regularly assist clients who are made redundant immediately before their scheduled return from parental leave, or shortly after returning to work. Where an employer can establish that a redundancy is "genuine", workers have little or no recourse, despite patterns that suggest parental leave is a precipitating factor rather than a coincidence.

This reveals a significant structural gap in the NES. While redundancy payments may provide some financial compensation, they do not prevent discriminatory targeting of workers who have taken parental leave, nor do they adequately deter employers from using redundancy as a mechanism to remove workers whose roles have been temporarily backfilled or whose caring responsibilities are perceived as inconvenient.

Data from the Australian Human Rights Commission indicates that one in five mothers experience dismissal, redundancy or restructuring during pregnancy, parental leave or upon return to work, pointing to a systemic pattern rather than isolated misconduct¹⁹.

The current "genuine redundancy" test does not sufficiently account for the heightened risk of adverse action faced by workers who have recently exercised their right to parental leave. Without additional safeguards, the return-to-work guarantee can be effectively hollowed out by redundancy processes that are technically compliant but substantively discriminatory.

Recommendation 11: Strengthen redundancy protections for workers who have taken parental leave by introducing a higher evidentiary threshold for employers to establish a genuine redundancy where a worker has taken parental leave within the preceding two years. To give practical effect to this reform, employers should be required to demonstrate, with clear and contemporaneous documentary evidence, that: the employee's role was not temporarily filled in a manner that displaced the returning worker; reasonable redeployment options were genuinely explored, documented and offered where available; and the redundancy decision was not connected, directly or indirectly, to the worker's pregnancy, parental leave or caring responsibilities.

Natalie, a full-time worker in the mining industry, was made redundant shortly before commencing parental leave while performing a "safe job" during pregnancy.

Her employer selected her for redundancy based on staff KPIs. However, because she was performing alternative duties in her safe job, she was unable to meet the same KPIs as other staff.

The redundancy resulted in her failing to qualify for Parental Leave Pay and caused significant financial stress.

Redundancy Calculations and Part-Time Work

Women, particularly mothers and carers, frequently transition from full-time to part-time work with the same employer due to caring responsibilities. Under current redundancy provisions, this common and gendered work pattern can significantly reduce redundancy pay, despite long service and an ongoing attachment to the employer.

This penalises caring work and entrenches gender inequality.

Without reform, current calculation methods impose a structural financial penalty on workers who have reduced their hours due to pregnancy, parental leave or ongoing caring responsibilities.

Redundancy pay is intended to operate as income protection. Calculations that rely solely on current hours fail to meet this purpose for workers whose hours have reduced for legitimate and foreseeable caring reasons.

Recommendation 12: Amend the NES redundancy provisions to ensure that redundancy pay calculations allow service to be averaged or pro-rated across periods of full-time and part-time work with the same employer. Redundancy entitlements should reflect the totality of the employment relationship, rather than being determined solely by reduced hours at the point of termination.

¹⁹ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report* (2014) <https://humanrights.gov.au/our-work/sex-discrimination/publications/supporting-working-parents-pregnancy-and-return>

Maximum Weekly Hours

The NES maximum weekly hours provisions rely on a broad reasonableness test that places the burden on workers to resist excessive hours. This approach does not adequately reflect modern shift patterns, psychosocial hazards or power imbalances in insecure work.

Recommendation 13: Clarify the reasonableness test and strengthening refusal rights to ensure contemporary health and safety risks are properly addressed.

Parental leave and related entitlements

Reducing the eligibility period for unpaid parental leave and paid no safe job leave

Women's earnings fall significantly behind men's in the first five years following childbirth.²⁰ The current 12-month eligibility requirement for unpaid parental leave and paid no safe job leave discourages job mobility and reduces opportunities for wage growth. Comparable jurisdictions, including the UK, are moving to remove qualifying periods.²¹

Recommendation 14: Amend the NES eligibility provisions to decrease the eligibility period for unpaid parental leave from 12 months to 6 months, including an extended transition period for small businesses to be required to introduce this change in their workplaces.

Employer paid parental leave

The NES contains no entitlement to employer paid parental leave. Many families welcoming a child, through birth or adoption, rely on the Australian Government Parental Leave Pay (PLP), which from July 2026, will increase to 26 weeks paid at the national minimum wage, with a minimum of 20 days (or 4 weeks) set aside for a partner to share, which may be taken concurrently.

Prior to 2023, the PLP used a model of primary carer and secondary carer payments, the latter being labelled "Dad and Partner pay". This model encouraged a pattern of care for children which reinforced gendered norms around paid work and unpaid care work and set many couples up on a trajectory of unequal caring responsibilities. Reform to the PLP scheme in 2023 was intended to "encourage shared care and send a strong signal that both parents play a role in caring for their children."²² These changes have resulted in slow progress; according to 2024-25 WGEA data men accounted for only 20% of those taking primary carer parental leave, a 3% increase on the previous year.²³

Introducing a baseline employer-funded entitlement would complement the Government PLP Scheme and send a clear normative signal that caregiving is a shared social responsibility rather than an individualised economic burden.

Recommendation 15: Introduce an entitlement to a minimum of 6 weeks of employer paid parental leave in the NES for a person responsible for care of a child who intends to take at least 4 months away from the workforce to provide that care, including an extended transition period for small businesses to be required to introduce this change in their workplaces. The entitlement should be available for all workers entitled to take unpaid parental leave.

Employer superannuation contributions on unpaid parental leave

In 2023, the Association of Superannuation Funds of Australia Limited reported a 20.5% superannuation gap between men and women, driven in part by women's greater time out of the workforce for care, higher rates of part-time work, and lower earnings²⁴.

From 1 July 2025, employees receiving Australian Government Parental Leave Pay (PLP) receive superannuation contributions at the Superannuation Guarantee rate (paid by the ATO). However, employer contributions during paid and unpaid parental leave remain largely discretionary. WGEA

²⁰ The Treasury, *Children and the Gender Earnings Gap: Evidence for Australia* (2023) [Children and the Gender Earnings Gap: Evidence for Australia](#)

²¹ UK Department for Business and Trade, Prime Minister's Office, 10 Downing Street, The Rt Hon Peter Kyle MP and The Rt Hon Sir Keir Starmer KCB KC MP, *Press release – Stronger parental leave rights to give millions of working families the "security they deserve"* (2026) [Stronger parental leave rights to give millions of working families the "security they deserve" - GOV.UK](#)

²² Joint Media release, The Hon Amanda Rishworth MP and Senator the Hon Katy Gallagher Delivering a historic expansion of Paid Parental Leave 19 October 2023, available at <https://ministers.dss.gov.au/media-releases/12811>.

²³ WGEA Australia's Gender Equality Scorecard 2024-25 at 66.

²⁴ Super Members Council, *Mind the gap: How unpaid super is deepening retirement inequality for women* (2025) [Mind the gap: How unpaid super is deepening retirement inequality for women](#)

data (2020–2021) indicates that even where employers offer paid parental leave, only 74% paid superannuation on that leave.

The absence of a mandatory NES requirement entrenches the superannuation gap at predictable points of workforce interruption. The Queensland Government's 2024 Public Service Directive, requiring superannuation for the first 52 weeks of parental leave (paid or unpaid), demonstrates a workable model.

Recommendation 16: Include additional provisions under Division 5 of the NES to mandate employer superannuation contributions on paid and unpaid parental leave, complementing the superannuation contributions made by the Australian Taxation Office on the PLP.

Enforcement, Regulation and Review of the NES

NES enforcement remains largely complaint-based, which fails workers who fear retaliation, lack job security, or are unaware of their entitlements. A minimum safety net cannot operate effectively where access to rights depends on an individual worker's willingness or capacity to initiate formal action.

Enforcement is further undermined where workers are not provided with clear, role-specific information about their employment terms at the outset. The Fair Work Information Statement is generic and does not require employers to specify the employee's actual terms and conditions. Workers are frequently left to decipher complex awards without knowing which award applies, their classification, employment status, ordinary hours, or correct rate of pay. This disproportionately affects women, who are over-represented in award-reliant, part-time and insecure work, where under classification and underpayment are prevalent.

As identified by Charlesworth and Campbell, clear, position-specific disclosure of employment terms functions as a regulatory mechanism in its own right, strengthening transparency, reducing power imbalances, and improving compliance with minimum standards²⁵

Improved public data on NES compliance, dispute outcomes and enforcement pathways is also necessary to identify systemic non-compliance and assess regulatory effectiveness. Preventative, education-focused approaches, particularly in small businesses and insecure sectors, can significantly improve compliance and reduce disputes before escalation. Community-based organisations such as Working Women's Centres play a critical role in bridging legal literacy gaps and supporting early resolution.

Recommendation 17: Reform enforcement mechanisms to: empower the Fair Work Commission to conciliate and arbitrate low-complexity NES disputes in a timely and accessible manner; retain the Fair Work Ombudsman as the primary body responsible for investigation and systemic enforcement; strengthen information-sharing and referral pathways between the Fair Work Commission, Fair Work Ombudsman and other relevant regulators; require employers, at commencement of employment, to provide a written statement specifying the applicable industrial instrument (including award name), classification, employment status, ordinary hours and rate of pay; and introduce a statutory review mechanism to ensure NES standards remain responsive to labour market change.

Conclusion

The NES must evolve to remain an effective and equitable safety net. The reforms proposed in this submission are not discretionary benefits, but necessary updates to ensure that minimum standards reflect contemporary working lives and promote the objects of the *Fair Work Act*.

Working Women's Centre Australia and the Working Women's Centre Network urge the Committee to recommend a program of NES reform that strengthens protections for women, insecure workers and those experiencing predictable life events, and stand ready to assist with further evidence and consultation.

²⁵ Sara Charlesworth and Iain Campbell, 'Righting the Regulatory Imbalance: Information Disclosure and Labour Standards Enforcement' (2018) 31(3) *Australian Journal of Labour Law* 233.