

Submission by the Australian Nursing and Midwifery Federation

**Inquiry into the operation and adequacy
of the National Employment Standards
under the *Fair Work Act 2009* (Cth)**

March 2026



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Nursing &
Midwifery
Federation



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Introduction

1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 356,000 nurses, midwives and care-workers across the country.
2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.
3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.
4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.
5. The ANMF thanks the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training for the opportunity to provide a submission to this Inquiry.



Overview

6. The Australian Council of Trade Unions (ACTU) has prepared a submission to this Inquiry outlining a number of proposals to make the National Employment Standards (NES) under the *Fair Work Act 2009* (Cth) (the Act) more fit for purpose. The ANMF is an affiliate of the ACTU and supports the positions of the ACTU and its affiliates.
7. The positions set out by the ANMF in this submission should be considered additional and complementary to those of the ACTU.

Objects of the Act

8. The NES have been in operation following the commencement of the Act almost two decades ago. Both the industrial landscape and the legislative framework in Australia have changed dramatically over that time. Some of the most significant changes have occurred in the first term of the Albanese Labor Government with the following pieces of legislation:
 - *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cth);
 - *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth);
 - *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Cth);
 - *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) and *(Closing Loopholes No. 2) Act 2024* (Cth).
9. Among the raft of changes was an expansion of the objects of the Act. Workplace relations laws that ‘promote job security and gender equality’ are now enshrined in sub-section 3(a) of the Act as a key goal of Australian industrial relations. Some of the amendments resulting from the abovementioned reforms have sought to address job security and gender equality through a legislative reform process. It should also be noted that the ongoing work of the Fair Work Commission (FWC) as the national workplace relations tribunal will now be conducted with an additional lens for job security and gender equality in its decision-making



functions.

10. The NES provisions were legislation in 2009 at a point in time when job security and gender equality were not elevated and central considerations of the legislative drafting process. The ANMF encourages this Inquiry to use this opportunity to evaluate whether the NES is properly aligned with the revised legislative objects of the Act.

Annual leave – definition of ‘shiftworker’

11. Sub-section 87(1)(a) of the Act provides a basic entitlement of 4 weeks annual leave for all employees, other than casual employees. Sub-section 87(1)(b) of the Act expands that entitlement to 5 weeks for employees who are considered ‘shiftworkers’.
12. Sub-sections 87(1)(b)(i) and 87(1)(b)(ii) of the Act respectively allow a modern award or enterprise agreement term to define or describe a shiftworker for the purpose of the additional week of annual leave.
13. For employees to whom a modern award or enterprise agreement does not apply, sub-section 87(3) of the Act sets out three criteria that an employee must satisfy to receive the additional week of annual leave:
 - The enterprise where the employee works operates on a 24 hour, 7 days a week basis; and
 - The employee is regularly rostered across those shifts; and
 - The employee regularly works Sundays and public holidays.
14. Modern awards and enterprise agreements tend to define a shiftworker in terms that generally permit employees to access the additional week of annual leave more readily than award/enterprise agreement-free employees. As such, the definition of shiftworker under sub-section 87(3) of the Act serves as the baseline threshold under which the fewest employees would qualify for the 5 week entitlement.



15. The ANMF observes that this framing of the shiftworker under sub-section 87(3) of the Act is far too confined, and needlessly excludes workers who perform irregular shift patterns yet fall short of that definition, thereby not getting the additional week of annual leave. This situation is particularly egregious when considering the underlying purpose of the additional week of annual leave, which is to compensate for the difficulties inherent in being expected to be available to work any time of day, any day of the week, including weekends and public holidays.
16. For example, an employee who works mostly or exclusively nightshifts, but only Monday to Friday, would not be considered a shiftworker under sub-section 87(3) of the Act for having never worked on a Sunday. The difficulties of their shift patterns are considered irrelevant when trying to meet the statutory shiftworker definition.
17. To add complication, the award system creates a range of inconsistent measures for the meaning of 'shiftworker'. In the case of the *Nurses Award 2020*, clause 2 defines it as 'an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 13.1(a)', which in turn states that '[o]rdinary hours of work for a day worker are worked between 6.00am and 6.00pm, Monday to Friday.' In other words, a shiftworker is any employee who regularly performs afternoon, night, or weekend shifts. This is the award-framed, commonly understood meaning of shiftworker within the *Nurses Award*.
18. However, sub-clause 22.2(b) of the *Nurses Award* provides a separate definition for a shiftworker, specifically 'for the purposes of the additional week's leave provided by the NES, is an employee who... is regularly rostered over 7 days of the week; and... regularly works on the weekends.' The ANMF submits that the NES should be amended to provide a more expansive and consistent definition for a shiftworker, ideally one that better recognises the fact that employees are expected to avail themselves to irregular hours of work.
19. The ANMF has recently been approached by members employed at a health clinic that



operates across all 7 days of the week and those employees are rostered across all days to varying degrees. The employees are not in receipt of the additional week of annual leave, as the employer maintains that in order to have regularly worked across the week, an employee will need to have worked at least 29 times on each day of the week during a year of service. The ANMF maintains that this is an arbitrary measure, however, it does underscore the fickle nature of identifying shiftworkers under the current system.

20. One of the problems associated with sub-section 87(3) of the Act is the requirement for an employee to have regularly worked Sundays and public holidays. In setting the standard for what it means to have regularly worked Sundays and public holidays, the FWC in *O'Neill v Roy Holdings Pty Ltd*¹ determined that a full-time employee must have worked a minimum of 34 Sundays and 6 public holidays in a particular year of service to be considered a shiftworker. The ANMF submits that this creates too high a bar for workers to surmount before they become eligible for the additional week of annual leave.
21. Critically, this approach of counting Sundays and public holidays worked over the course of a year is fundamentally flawed and sits at odds with the operation of annual leave provisions under the Act. In *ANMF v Healthscope Operations Pty Ltd*², the FWC was tasked with determining whether a group of employees was entitled to 6 weeks of annual leave under the terms of an enterprise agreement on the basis that those employees were shiftworkers. In his decision, Commissioner Sloane noted at [77] that under sub-section 87(2) of the Act, annual leave accrues progressively, meaning that 'the legislation [does not allow] an employer to wait until the end of the year to determine whether the employee will be entitled to four or five weeks of annual leave. Leave will accrue at the rate necessary to match the annual leave entitlement. (it is in this context that I have some reservations as to the outcome in *O'Neill*.)'
22. Commissioner Sloane went on to state at [82] in that case that the employer's practice of

¹ [2015] FWC 2461.

² [2025] FWC 1864.



retrospectively reassessing whether an employee met the threshold for additional leave as a shiftworker following each year of service was inconsistent with the requirement that the full annual leave entitlement must accrue progressively. The failure to allow a shiftworker their additional annual leave is a breach of the NES, and merely correcting the leave balance later in that year of service does not cure the breach.

23. This case neatly exposed the conundrum of the shiftworker definition vis-à-vis the need for annual leave to accrue progressively. Where an employer fails to accurately forecast whether an employee would be entitled to additional annual leave as a shiftworker, there will have been a breach of the NES. Both the employer and the employee lose out under this arrangement.
24. The ANMF proposes that subsections 87(1)(b) and 87(3) of the Act be repealed and replaced with the following:

5 weeks of paid annual leave, if the employee is a shiftworker, meaning an employee:

Whose ordinary hours of work are not limited to, or limited within, 6.00am to 6.00pm Monday to Friday; or

Who is defined as a shiftworker by a modern award or enterprise agreement that covers them.

25. Under such a provision, an employer would determine at the outset of employment whether an employee's hours of work might include shifts extending outside of 6.00am and 6.00pm, or weekend work. As such it would be immediately clear whether an employee would be entitled to the additional week of annual leave.
26. We anticipate that redefining shiftwork in this way would focus the minds of employers to only issue employment contracts requiring irregular working hours when this is an actual requirement of the role, rather than just a default term of a proforma contract. The



additional week of annual leave should serve to compensate employees who avail themselves to irregular hours of work, not just those who satisfy a particular formula of shift patterns as is currently the case.

Annual leave – quantum

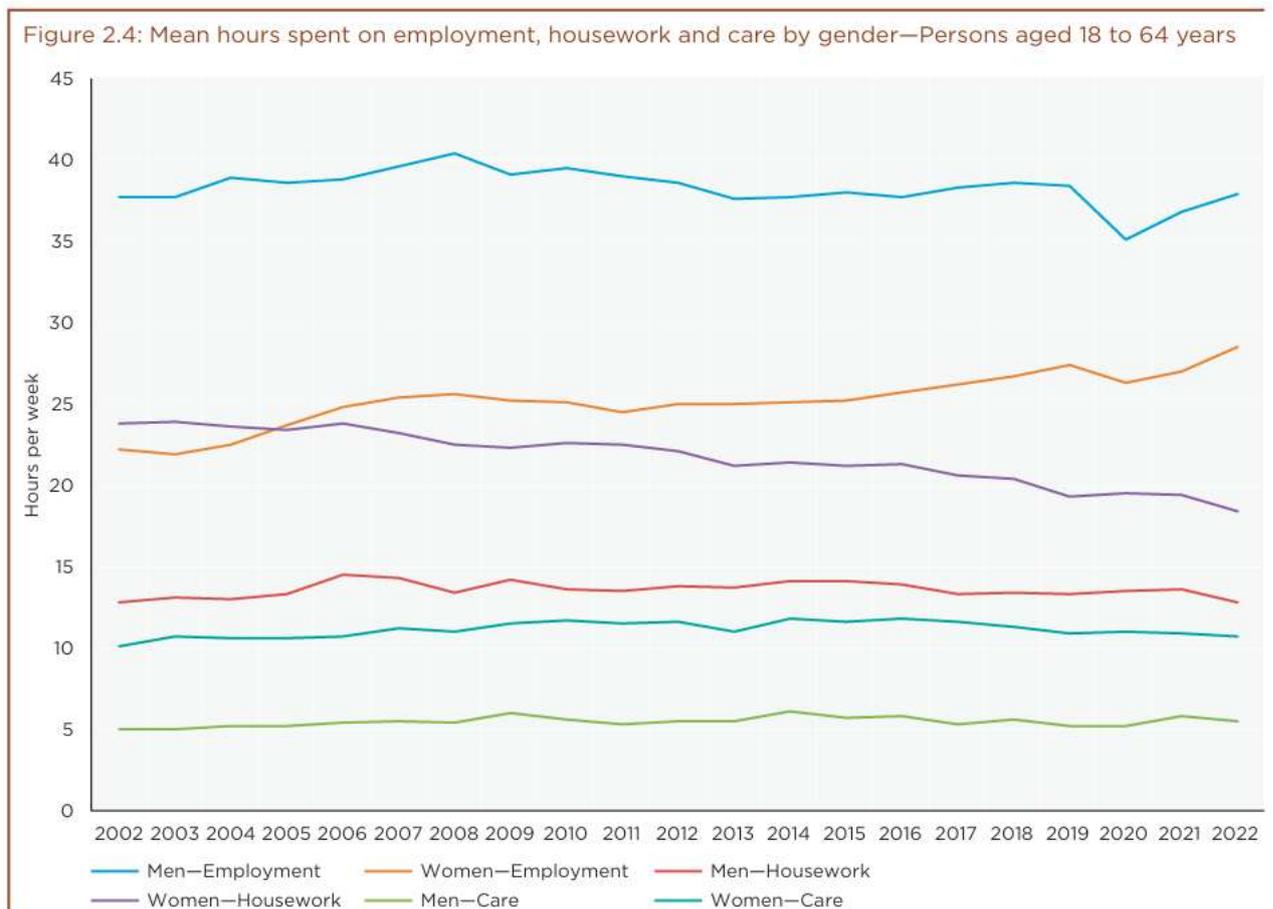
27. The ANMF notes that the ACTU and other unions are advocating for an increase in the quantum of annual leave under the NES as part of this Inquiry. We agree with this position and believe that the entitlement under section 87 of the Act should be 5 weeks of paid leave, with 6 weeks for shiftworkers.
28. The ANMF believes that Australian workers should be rewarded for their contribution to society through work. The nature of work and home life has changed drastically since 1974 when 4 weeks of annual leave was set as a national standard. A greater proportion of women have entered the work force, and for many of them, their time off is utilised to provide additional care for family members, both children and elderly parents.
29. It is worth noting that Labour Force data from the Australian Bureau of Statistics (ABS) indicates that the participation rate for female workers has increased dramatically from 43.3% in February 1978 to 62.8% in February 2025. While over that same period the male worker participation rate has decreased from 79.5% to 71.1%, overall the general trend of all workers combined has been increased by 5.8%.³
30. The Melbourne Institute at the University of Melbourne has been conducting annual statistical research on Household, Income and Labour Dynamics in Australia (known as the HILDA Survey) for over two decades. Their 2024 Report provides some helpful analysis on unpaid domestic labour from 2002 to 2022.⁴
31. Over that period, the number of hours spent providing care has remained constant for both

³ <https://www.abs.gov.au/articles/spotlight-changes-participation-rates-men-and-women-australia>

⁴ Wilkins, R. et al (2024). The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 22. Melbourne: Melbourne Institute of Applied Economic and Social Research, 18-28.



men and women. Similarly, the number of hours spent by men performing housework has remained constant, whereas the amount of housework performed by women has declined slightly seemingly as female workforce participation has increased. In terms of both the provision of care and the performance of housework, women complete more than men on both counts. In any case, the provision of care and performance of housework has broadly remained constant.



32. The ABS Labour Force data when considered alongside the HILDA Survey data paints a stark picture of the evolving composition of the Australian workforce. Over time, Australia has shifted from a society where the male breadwinner would provide for a family, to one in which both parents typically work. During that time, unpaid domestic labour, including housework and caring responsibilities has remained constant. Put simply, as more women are entering the workforce, domestic pressures are not disappearing, so the overall



pressures on families are increasing. An increase to the NES annual leave entitlement would go some way to alleviate those pressures.

33. Focusing specifically on the needs of working parents with school-aged children, it is clear that 4 weeks of annual leave as a base entitlement is inadequate when trying to balance work and childcare. Across all jurisdictions, the duration of school holidays for 2026 ranges from 76 to 101 days (see the table below). For a full-time parent working 5 days a week, 20 days per annum (or even 40 days combined from two parents) is not sufficient for parents to provide care to school-aged children across the entirety of school holidays. For single parents, the situation is even more dire.

Jurisdiction	Term 1 / Autumn holidays	Term 2 / Winter holidays	Term 3 / Spring Holidays	Term 4 / Summer Holidays	2026 total school holidays
ACT ⁵	18	17	17	44	96
NSW Eastern Division ⁶	11	12	12	41	76
NSW Western Division ⁷	11	12	12	47	82
NT ⁸	11	24	17	49	101
Qld ⁹	17	16	17	46	96

⁵ <https://www.act.gov.au/living-in-the-act/public-holidays-school-terms-and-daylight-saving>.

⁶ <https://education.nsw.gov.au/schooling/calendars/2026>.

⁷ Ibid.

⁸ <https://nt.gov.au/learning/primary-and-secondary-students/school-term-dates-in-nt>.

⁹ <https://education.qld.gov.au/about-us/calendar/term-dates>.



SA ¹⁰	16	16	16	47	95
Tas ¹¹	16	16	16	44	92
Vic ¹²	17	16	16	39	88
WA ¹³	17	16	16	45	94

34. Aside from the quantum of annual leave being unaligned with the length of school holidays, parents often have little control over their rosters or work patterns. Those patterns may or may not align with the other parent, so their days off may not enable them to provide care as needed. The practical reality of this is that for much of the school holiday period, parents depend on other family members and/or costly childcare providers to fill the gaps. An increase of annual leave from 4 to 5 weeks, and 5 to 6 for shiftworkers, would better enable parents to balance work and domestic responsibilities.
35. The challenges of balancing work and care are not confined to childcare. The average age of first-time mothers in Australia is 31.1, meaning that during menopausal years, many women will be responsible for at least one teenager in addition to the caring responsibilities of aging parents and family members. “Sandwich” generation caregivers, providing care to the generation above and below simultaneously, report substantial financial and emotional difficulties, high caregiver role overload, and low use of support services, with high labour force participation. A lack of time only exacerbates these problems.
36. For women who choose to have children or who need to take career breaks because they shoulder the caring responsibilities for children and children/adults with disabilities or aging parents, income is affected as they lose momentum and may miss opportunities to

¹⁰ <https://www.education.sa.gov.au/students/term-dates-south-australian-state-schools>.

¹¹ <https://www.decyp.tas.gov.au/learning/term-dates/>.

¹² <https://www.vic.gov.au/school-term-dates-and-holidays-victoria>.

¹³ <https://www.education.wa.edu.au/future-term-dates>.



advancement and therefore increased wages. This also results in a loss of superannuation affecting their retirement income, increasing the risk of poverty and homelessness in retirement. They may also need to work well after the age of retirement resulting in physical demands especially if that work is direct clinical care on rotating rosters. Women with caring responsibilities may choose casual work so they can have the flexibility needed to undertake these unpaid caring roles. This results in a lack of secure income, inability to progress in the workplace, often exclusion from education and professional development and lack of access to working conditions such as personal or annual leave.

37. We anticipate that an increase in the NES annual leave entitlement would lead to better workforce participation and job security, as workers with complex caring responsibilities would have more time and ability to balance work and care, without needing to leave the workforce.
38. The ANMF notes that the position articulated above in paragraphs [11] to [26] in respect of annual leave for shiftworkers is based on the current entitlement of 4 weeks annual leave, and 5 weeks for shiftworkers. For the avoidance of doubt, the ANMF's position in paragraphs [26] to [37] should be read jointly, rather than as alternative proposals.

Annual leave – request to vary or cancel

39. Section 88 of the Act allows an employer and employee to mutually agree on a period of annual leave. In practice, most workplaces have a system that allows employees to submit their leave requests to their employer. The Act further requires that an employer must not unreasonably refuse to agree to a request.
40. The ANMF is of the view that the NES could be more prescriptive about the manner in which planned annual leave is treated once there is agreement on the timing of leave. The Act should be amended to allow an employee to request that an already approved period of leave be varied or cancelled. Such a request should be treated in the same manner as the initial leave application, namely that the request for variation or cancellation of leave must not be unreasonably refused by the employer.



41. Additionally, the annual leave provisions should include a note to clarify that an annual leave request, once approved by the employer, cannot be cancelled unilaterally by the employer. The ANMF has been approached on a number of occasions by members whose employers have sought to revoke an approved period of leave under the misapprehension that they have the ability to do so. While the operation of the NES does not permit an employer to unilaterally revoke approved annual leave, the fact that the Act is silent on this does not assist with ensuring that all parties understand their obligations under the Act.

Annual leave loading

42. The annual leave loading is currently a modern award-based entitlement, rather than one that exists in the NES. As such, its application across the award system is inconsistent, although 17.5% is the most prevalent entitlement.

43. The inconsistency in the annual leave loading entitlement is a consequence of the award modernisation process, whereby some pre-modern awards with inferior annual leave loading provisions were carried into modern awards. While the ANMF does not have a comprehensive list of such awards, they should be considered anomalous.

44. The ANMF proposes that the annual leave loading entitlement be captured in the NES at 17.5%. This will have the effect of standardising the entitlement for award-free workers and the very few workers under modern awards where an inferior or no entitlement is the norm.

45. Any new provision in the NES to capture annual leave loading would need to ensure that where modern awards and/or enterprise agreements currently provide superior conditions, that such provisions would not be extinguished. For example, sub-clause 22.5(b) of the *Nurses Award* provides that 'a shiftworker will be paid the higher of an annual leave loading of 17.5%; or the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.'

Payment while on leave

46. The NES provides for a range of paid leave entitlements, many of which are paid to the



employee at their base rate of pay. These include:

- Paid no safe job leave, pursuant to sub-section 81(6) of the Act;
- Annual leave, pursuant to section 90 of the Act;
- Personal/carer's leave, pursuant to section 99 of the Act;
- Compassionate leave, pursuant to section 106 of the Act; and
- Jury service pay, pursuant to sub-section 111(2) of the Act.

47. The practical effect of these entitlements being set at the employee's base rate of pay is that many components on an employee's usual wages do not flow into periods of leave. These include penalty rates, bonuses, loadings and allowances. For many workers, such payments represent their living wage, rather than a supplement to their income.

48. The ANMF sees no basis to exclude such payments from a period of leave. Whether a worker is off sick or performing a civic duty, they should be able to do so with the security of knowing that their wage will be unaffected by their temporary absence.

49. The ANMF proposes that these sections of the NES be amended to provide for payment at the employee's full rate of pay, as is currently contemplated in section 106BA in respect of family and domestic violence leave.

50. We note that while the parental leave provisions were excluded from the terms of reference for this Inquiry, we have nonetheless included them here in the form of paid no safe job leave for the sake of completeness.

Personal/carer's leave – fitness for work

51. Section 97 of the Act permits employees to use personal/carer's leave in two situations: where the employee is not fit for work because of personal illness or injury, or to provide care or support to a member of their family or household who requires care or support



because of illness, injury, or unexpected emergency. We wish to focus on the first of these situations.

52. The ANMF notes that not all medical appointments occur because a person is not fit for work. The ANMF submits that the limitation around fitness for work prevents many employees from accessing necessary steps aimed at maintaining good health. The ANMF is regularly approached by members who have sought to use their personal leave for medical and other preventative health appointments in circumstances where they are otherwise fit for work, and employers have lawfully rejected their leave applications.
53. Many such appointments, such as dental, physiotherapy, sexual health, psychologist, etc., can only be booked and attended during ordinary business hours, meaning that workers often forego these important health services. The irony of this is that when left unchecked, these health issues can worsen over time and render an employee unfit for work at a later stage for health issues that are foreseeable and avoidable but for proper access to healthcare and treatment.
54. The ANMF urges this Inquiry to consider allowing employees to access leave for the purpose of attending appointments to maintain good health. In saying this, we urge caution around simply amending section 97 of the Act to facilitate this. The quantum of personal/carer's leave is 10 days. Our concern around simply allowing workers to use this entitlement for medical and other healthcare appointments, that they may deplete an entitlement that they might need for a future health or family/household crisis. Perversely, worker's might instead simply avoid using their personal/carer's leave for preventative healthcare to save it up for a "rainy day", and in so doing, neglect their health needs in the short term.
55. The ANMF proposes that in addition to any change to permit the use of leave for medical and other healthcare appointments, the pool of leave needs to be expanded accordingly. We do not have a set view on how this could be done, but we believe that two alternate proposals are worthy of consideration:



- That section 97 of the Act should be amended to permit the use of personal/carer's leave for medical and other healthcare appointments, combined with an increase to the overall quantum of leave; or
- The NES be amended to include a separate paid leave entitlement to allow employees to attend medical and other healthcare appointments without fitness for work being a prerequisite.

56. In either case, any such leave entitlement should not be paid out upon termination of employment, as is currently the case with personal/carer's leave, so as to encourage workers to use the entitlement for its intended purpose.

57. The ANMF anticipates that such a change to the NES would improve the overall health of the workforce. To the extent that workers may be taking extra time off to attend appointments, this would likely be counterbalanced by workers needing less time off sick for health matters that are preventable. Absences may also be shorter and planned, rather than lengthy and unpredictable.

Long Service Leave

58. The ANMF supports the ACTU's call for a national uniform minimum standard for long service leave, and that the best approach for this is to ensure that no worker loses out. In our view, this would mean identifying the most beneficial features of each legislated long service leave scheme to consolidate into a single national standard.

59. This Inquiry will be unlikely to achieve this objective, but it may be possible to lay the groundwork for federal, state and territory governments to pursue such a reform in future.

60. The ANMF recognises that by virtue of section 113 of the Act many workers are captured by inferior pre-modern award-derived long service leave provisions, and that there are justifiable reasons to amend the Act to ensure that those workers enjoy their full entitlement. ANMF members in Victoria are an exception to this, in that the preserved



operation of clause 20 of the *Nurses (Victorian Health Services) Award 2000* provides for a more beneficial entitlement of 6 months long service leave at the completion of 15 years' service. This is double the entitlement under the *Long Service Leave Act 2018 (Vic)*, albeit accessible at a later point than other workers in Victoria where long service leave is accessible after 7 years. This entitlement plays an important role in workforce retention for nurses in that state, particularly in the current climate where the World Health Organisation reports a global shortage of nurses.¹⁴

61. The ANMF urges this Inquiry to consider any changes to section 113 of the Act cautiously. Any changes to move workers away from pre-modern award-derived long service leave schemes should only occur where entitlements are inferior to the long service leave legislation of the relevant jurisdiction.
62. In the case of workers who enjoy a superior entitlement under a pre-modern award-derived long service leave scheme, such as nurses in Victoria, we recommend that the quantum of the long service leave entitlement be preserved, but all other aspects of the entitlement should operate pursuant to the long service leave legislation of the relevant jurisdiction.
63. This would provide benefits to workers without interfering with the overall entitlement. For example, workers would enjoy a broader recognition of continuous service, leave could be taken for shorter periods, and could be accessed earlier in employment. In effect, this reflects current outcomes from enterprise bargaining, most notably in the *Nurses and Midwives (Victorian Public Sector) Single Interest Employer Agreement 2024-2028*.
64. Any changes to long service leave should be done with a view to moving towards a nationally uniform minimum standard in which all workers receive an uplift, or are at the very least blissfully unaffected.

Public Holidays

¹⁴ <https://www.who.int/news-room/fact-sheets/detail/nursing-and-midwifery>



65. Sub-section 115 of the Act sets out the national public holidays in Australia. States and territories through their own parliaments have legislated for particular public holidays within their own jurisdictions, such as Melbourne Cup Day or the various iterations of the King's birthday.
66. There are two dates that are almost uniformly recognised in all jurisdictions, but are not enshrined as public holidays under the Act. Easter Saturday is a public holiday in all jurisdictions except Tasmania and Western Australia, and Easter Sunday is a public holiday everywhere except Tasmania.
67. The ANMF recommends that both these dates be made public holidays under the Act. For both religious and cultural reasons, Easter is widely celebrated in Australia, particularly given the NES creates a long weekend buttressed by Good Friday and Easter Monday as public holidays. In the two jurisdictions where Easter Saturday and Sunday are not both public holidays, many weekday workers will nonetheless have a long weekend by virtue of never being required to work a Saturday or Sunday. However, this creates a two-tiered workforce whereby some are expected to work over a long weekend, but without the benefit of public holiday pay, as is the case in almost all other jurisdictions.
68. The difference in pay between an ordinary weekend and a public holiday is significant. On an ordinary Saturday, an employee would be paid 150% of the minimum hourly rate under sub-clause 21.1 of the *Nurses Award*. On an ordinary Sunday, the pay would be 175% of the minimum hourly rate under sub-clause 21.1 of the *Nurses Award*. By contrast, the pay rate on a public holiday is 200% of the minimum hourly rate under clause 28.2 of the *Nurses Award*. Similar provisions exist in other modern awards. For employees under the *Nurses Award*, the difference in pay between an ordinary weekend shift and a public holiday can range from \$6.15 per hour at the lower end of the classification structure,¹⁵ to \$41.82 per

¹⁵ A student enrolled nurse under 21 years of age would earn \$42.91 per hour on a Sunday and \$49.04 on a public holiday.



hour at the higher end.¹⁶

69. ANMF members work in hospitals, aged care facilities and a range of other healthcare settings that operate on a 7 day week (often 24 hour) basis. Many anticipate that they will be called upon from time to time to work a public holiday or long weekend, knowing that others will be enjoying that time off. In exchange, their elevated pay rates on public holidays reflect the fact that they are being called upon to perform work at times that deprive them of those important occasions with family and friends. It is disingenuous to pretend that Easter Saturday and Sunday are no different to any other weekend on which work is performed.

Redundancy – termination payment

70. The ANMF strongly support the proposition by the ACTU that the discount for redundancy pay under sub-section 119(2) of the Act for employees who have completed at least 10 years service is not only anachronistic, it is also fundamentally unfair. Currently, an employee terminated for redundancy who has completed at least 10 years service would be entitled to 12 weeks pay, yet would receive less pay than a worker who has completed between 7 and 10 years service. A more appropriate amount would be 20 weeks pay for any service beyond 10 years where a genuine redundancy has occurred.

71. In addition to this, the ANMF believes the redundancy schedule is deficient in respect of workers who are made redundant, but have less than 1 year of service, where the entitlement is currently nil. A worker made redundant through no fault of their own will likely face some degree of hardship, irrespective of their length of service.

72. The ANMF recommends that a 2 week payment be inserted into the redundancy schedule under sub-section 119(2) of the Act for employees terminated with less than 1 year of service because of redundancy.

¹⁶ A casual aged care level 5 registered nurse would earn \$125.46 per hour on a Saturday and \$167.28 on a public holiday.



Redundancy – variation by the employer

73. Section 120 of the Act uniquely allows an employer to apply to the FWC to reduce the quantum of a redundancy payment, possibly down to nil, either because the employer has obtained acceptable alternative employment for the employee, or because the employer cannot pay the amount. When exercised, this option further exacerbates an already stressful situation for workers facing potential unemployment for a period of unknown duration.
74. Aside from the right to be consulted about a workplace redundancy, an employee will have to properly consider their options. This might entail internal redeployment to potentially inferior positions, external offers procured by the employer, or no other job at all, and are usually considered in an environment where the employee quite reasonably believes that were they to turn down any offer, a redundancy payment would still be forthcoming. An application by an employer to reduce a redundancy payment often comes as a surprise, and critical decisions might have been made by the employee without the complete picture in mind.
75. The ANMF recommends that section 120 of the Act be amended to:
- Require an employer to notify an employee in writing of their intention to apply to the FWC to reduce a redundancy payment upon notification of the redundancy itself; and
 - Such an application must have been made to the FWC before the redundancy takes effect.
76. Failure to comply with the above ought to preclude an employer from utilising this provision.

Paid reproductive health leave

77. It is the objective of the ANMF to see a new right enshrined in the NES, being 10 days paid reproductive health leave for all national system employees, a view that is shared by the ACTU and other union affiliates. The provision, as envisaged, would permit a worker the



time, flexibility and support to respond to reproductive health matters, and to take preventative healthcare measures.

78. 'Reproductive health' would be broadly defined to encompass a range of health issues impacting predominantly female employees across their working lives, including menstruation, pregnancy, contraception, miscarriage, perimenopause, chronic conditions, hormone therapy, assisted reproductive health services, vasectomy, hysterectomy, terminations, breast and prostate screenings.
79. In 2023, the FWC commissioned a report from the Social Policy Research Centre at the University of New South Wales with comprehensive data about gender-based occupational segregation. The report identified that 8 of the 29 most feminised occupations in Australia fell within the coverage of the ANMF.¹⁷ With increased female workforce participation and an ageing worker demographic, it is essential that the industrial system evolve to meet the needs of its changing workforce.
80. By way of illustration, menopause symptoms among healthcare professionals can lead to reduced performance, absenteeism, and intention to leave the profession in favour of a less demanding positions. Appropriate supports are therefore needed to help retain experienced nurses, midwives, and personal care workers. This is of particular importance considering the increasing average age of health workers, increased national retirement age and access to aged pension, and decreased attraction of new workers. While it must be acknowledged that menopause is a normal part of a woman's life, it must also be acknowledged that it presents symptoms that can affect the socially accepted norms of work, often developed by and for men. Addressing the inequalities which arise in menopause and perimenopause is integral to the objectives of gender equity.
81. The nature of work (and particularly nursing and midwifery as 24-hour professions) places unique demands on the metabolic health of workers. Circadian disruption has been

¹⁷ Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). Gender-based Occupational Segregation: A National Data Profile. Sydney: UNSW Social Policy Research Centre, 8-9.



correlated to earlier onset of menopause symptoms, which carries an increased risk of adverse health outcomes. Such arrangements continuing for workers on a long-term basis likely contributes to heightened absenteeism to deal with subsequent health issues, as well as contributing to an exodus from the profession.

82. The ANMF maintains that all workers experiencing reproductive health issues should benefit from a national entitlement of paid reproductive health leave.

Cultural and kinship leave

83. The ANMF recognises and respects Aboriginal and Torres Strait Islander people as the First Peoples of Australia and their valuable contributions to society. Aboriginal and Torres Strait Islander people have family and kinship relationships that are extensive and complex. Their cultural obligations may not sit neatly alongside the rigid confines of the industrial relations framework.

84. Many workplaces in Australia have acknowledged this, the outcome being that union members and employers have come together through enterprise bargaining to provide leave arrangements to meet the cultural needs of their First Nations colleagues. For example, the ANMF and the Victoria public sector have included a 'cultural and ceremonial leave' provision at clause 73 of the *Nurses and Midwives (Victorian Public Sector) Single Interest Employer Agreement 2024-2028*.

85. The absence of such a provision from the NES means that such an entitlement cannot be enjoyed by all First Nations workers in all workplaces. The ANMF strongly supports the ACTU's call to create a new entitlement in the NES for cultural and kinship leave, and endorses the proposed wording in their submission.

Roster justice

86. Rostering provisions under the Act are largely a creature of the modern awards system and enterprise bargaining. We acknowledge the unique traits of industries and occupations that necessitate a variety of rostering arrangements.



87. The absence of any provisions around rostering has created a system whereby there is simply no national benchmark for decent and fair rostering practices. The ANMF jointly supports the Australian Services Union and the Shop Distributive & Allied Employees' Association proposal for a basic rostering justice provisions being included in the NES as an addition to section 62 of the Act.

88. The proposed wording is as follows:

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 account 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*
 - (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.*



89. A rostering provision in the NES would set a baseline for rostering provisions for workers under the Act. Any modern awards that fall below that benchmark would need to be amended to meet the higher standard, otherwise modern awards and enterprise agreements would continue to play an important role to create rostering provisions suitable to particular industries, occupations and workplaces.

Conclusion

90. The NES is the bedrock of the industrial relations system in Australia. For many years it has provided the basic entitlements for workers covered by the Act. While its function as a safety net continues to be important, that safety net could best be described as threadbare.

91. This Inquiry provides a timely opportunity for reviewing whether the terms of the NES continue to be fit for purpose. The ANMF along with the ACTU and its affiliates maintain that there is ample room for improvement.

92. The ANMF encourages this Inquiry to consider the many proposals from the union movement to improve the NES in the interests of Australian workers. The ANMF would welcome any opportunity to expand on or explore proposals further that this Inquiry considers meritorious.