Working Women's Centre NSW
Women's Legal Service NSW

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

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Contact:
Emily Gray Ph: 02 8745 6900

About Women's Legal Service NSW

Women's Legal Service NSW (**WLS NSW**) advocates for an end to gender-based violence and for gender equality in Australia. As a state-wide specialist women's legal service, we assist women across NSW by providing legal advice and representation from our trauma informed, holistic legal practice across a range of practice areas including family law, domestic/family and sexual violence, compensation and victims support for victims of crime, discrimination, employment and sexual harassment. We prioritise women who are experiencing deep and persistent disadvantage.

Our specialist programs include:

- First Nations Women's Legal Program, led by First Nations staff and supported by a First Nations Women's Consultation Network,
- Women's Rights, and
- Working Women's Centre.

All three programs focus on responding to legal issues faced by women with a particular focus on responding to gender-based violence and addressing women's safety, economic security, and intersecting discrimination.

We use our experience gained from working with over one hundred thousand women and our feminist analysis of social issues and the law to determine where we can make the most impactful and positive change. We advocate for systemic change through policy and law reform, strategic litigation, and providing education and training to the legal profession, the community services sector, and other key stakeholders.

About the Working Women's Centre NSW

The Working Women's Centre NSW addresses a critical service gap in protecting a woman's right to work safely and free from discrimination, as well as advancing women's employment rights. It provides trauma-informed legal advice and representation, alongside education, training and law reform initiatives to ensure the law better reflects the needs of working women.

Acknowledgements

We acknowledge the Traditional Custodians of the lands on which we live and work across NSW. We pay deep respects to Elders past and present. This is, was and always will be Aboriginal land. We also acknowledge the many women subjected to gender-based violence and workplace exploitation with whom we work, and whose voices inform our advocacy in the hope for positive change.

Contributions

This submission has been drafted by Emily Jol, Emily Gray and Sharmilla Bargon.

Opening comments

1. We thank the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training for the opportunity to comment on the operation and adequacy of the National Employment Standards (**NES**) under this inquiry.

2. The Working Women's Centre NSW (**WWC**) provides advice, support and representation to women who are experiencing issues related to employment, such as discrimination, sexual harassment, unfair dismissal, unpaid wages or superannuation, or difficulty accessing flexible work arrangements or domestic violence leave. We advocate for gender equality and safety in the workplace and economic security for women throughout NSW and Australia.

3. In principle, the NES sets a universal minimum standard of work and ensures enforceable workplace rights to protect employees from unfair treatment and exploitation. In practice, we see our clients slipping through the cracks.

4. The workplace relations landscape has shifted significantly in the 16 years since the NES was implemented. Piece-meal reforms have contributed to a 'leaky' structure of protection and entitlements, whereby the workers most prone to exploitation are not caught by the safety net.[1] Largely based on the concept of full-time permanent work, the NES is not reflective of the changing nature of the labour market or the growth of 'non-standard' employment.

5. The *Fair Work Act 2009* (Cth) (**FWA**) seeks to provide workplace relations laws that promote gender equality, job security, prevent discrimination and unfair treatment, and assist employees to balance work and family responsibilities.[2] However, women, First Nations workers, migrant workers, young workers and workers with disability continue to be disproportionately exploited at work. Pervasive and persistent rates of exploitation indicate that the NES is not operating as an effective and enforceable protective mechanism for vulnerable workers.

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[1] Iain Campbell and Sara Charlesworth, 'The National Employment Standards: An Assessment' (2020) 33(1) *Australian Journal of Labour Law* 36, 41.
[2] *Fair Work Act 2009* (Cth) s 3.

6. We welcome the strengthening and expansion of NES entitlements with the primary objective of increasing protections for non-standard and precarious workers, and providing an inclusive and gender equitable safety net for marginalised workers.

Gaps in the safety net framework

Expanding NES coverage to include precarious and non-standard workers

7. Access to a minimum standard of work should be universal rather than differential based on one's employment relationship. This inquiry calls for consideration of how specific demographics engage with the NES, including women, First Nations workers, young workers, migrant workers and workers with disability. These groups are more likely to be engaged in precarious or non-standard types of work that are not equally safeguarded by NES entitlements.[3]

Recommendation 1

We urge the Standing Committee to expand the scope of the NES to cover precarious working arrangements to provide a safety net of minimum labour standards, rather than employment standards, to effectively safeguard marginalised workers.

Reliance on other workplace instruments to fill the gaps

Gender disparity in award conditions and working time protections

8. As a standalone instrument, the NES does not ensure gender equitable working conditions as minimum entitlements are narrow and rely on alternate workplace instruments, such as modern awards and enterprise agreements, to supplement the gaps. This reliance is detrimental for women due to the significant gender disparities that are present across awards and industries.

9. Wages, entitlements and working time protections are demonstrably more generous in male-dominated industries, reflecting the historic undervaluation of feminised work.[4] The recent Fair Work Commission (**FWC**) gender undervaluation

[3] Above n 1, 41.
[4] Sara Charlesworth and Alexandra Heron, 'New Australian Working Time Minimum Standards: Reproducing the Same Old Gendered Architecture?' (2012) 54(2) *Journal of Industrial Relations* 164.

decisions reveal the severity of disparity, with some feminised awards requiring minimum wage increases of up to 27% to reach an equitable standard.[5]

10. Modern awards for some male-dominated industries provide minimum working time protections in the form of a mandatory written agreement of standard days and hours of work for all employees engaged in casual or part-time employment. Casualised and feminised awards, such as the SCHADS Award, have no comparable safeguards.[6]

11. Further, there is no specific statutory right to a break under the NES, leaving meal and rest break entitlements to be implemented by awards, enterprise agreements or employment contracts. In some cases, such as under the SCHADS Award, employees are entitled to penalty rates where a meal or rest break is not provided. We commonly see employers evading their obligations to deliver these entitlements at the expense of our clients.

Case study

The WWC assisted Adita*, a disability support worker whose employment is governed by the Social, Community, Home Care and Disability Services (SCHADS) Award. Adita's employer rostered her work at multiple clients' houses in one day as multiple separate shifts in order to avoid providing a break, paying her for her travel time or paying penalty rates. The employer asserted this practice complied with the SCHADS Award, whilst we have asserted there has been a breach. This would be an unambiguous breach of the Manufacturing Award.

**Not her real name.*

Gaps for employees not covered by awards

12. The WWC has assisted many clients who weren't covered by a modern award and relied on the NES to outline their minimum terms of employment. We commonly

[5] See the Children's Services Award [MA000120] PR794818 Fair Work Commission Determination as an example.
[6] Above n 4, 15.

see this occurring for women working in social media and digital marketing, an industry that is highly feminised and has no direct award coverage.[7]

13. The FWA outlines a list of working time protection terms that must be included in modern awards but provides no such prescription for the NES. In practice, this means employees who are not covered by a modern award are denied access to otherwise mandatory modern award terms. Employees should not be disadvantaged by reliance on the NES where their role is not covered by an alternate workplace instrument.

Recommendation 2

We recommend the establishment of a Minimum Safety Net award that applies in the absence of any more appropriate award or EBA. This would include minimum rights to, for example, ordinary hours worked, overtime, penalty rates, meal breaks and rest breaks etc.

Adequacy, relevance, and coherence of existing NES entitlements

Leave entitlements

Personal and carer's leave

14. The personal and carer's leave provisions allow for leave to be taken where a member of the immediate family or household of the employee requires care or support.[8] Women provide the vast majority of care to children, spouses, parents, in-laws, neighbours and friends.[9] The narrow definition in this provision does not reflect the breadth of informal care arrangements women are often engaged in. It also does not recognise First Nations kinship care or relationships.

15. The *Carer Recognition Act 2010* (Cth) provides a broader definition of a 'carer', allowing for a more comprehensive range of situations where a person might

[7] Ida Roivainen, 'At the Backstage of Feminised Content Creation: How Influencer Marketing Agencies and Their Data Practices Shape Social Media Work' (2026) *New Media & Society* 26. Accessed via <https://doi.org/10.1177/14614448251410510>.
[8] The entitlement to take carer's leave is outlined in s 96 of the *Fair Work Act 2009* (Cth), and the definition of carer's leave (or what and who it can be taken for) is articulated in s 97 of the FWA.
[9] Workplace Gender Equality Agency, 'Gender Equality and Caring' (Web Page). Accessed via <https://www.wgea.gov.au/gender-equality-and-caring>.

provide care.[10] We recommend the FWA adopts a comparable definition of 'carer' for the purpose of the NES entitlements.

Recommendation 3

We recommend that the FWA adopts a broader definition of 'carer', similar to that in section 4 of the *Carer Recognition Act 2010* (Cth) to better encapsulate the many forms of carer relationships, including First Nations kinship relationships.

'Unpaid special parental leave'

16. 'Unpaid special parental leave' under s 80 of the FWA is available to employees who experience pregnancy-related illness, or those who miscarry after 12 weeks where the child is not stillborn.[11]

17. Each year over 100,000 women in Australia experience pregnancy loss, with 85% of miscarriages occurring in the first trimester.[12] Pregnancy loss at any stage is a traumatic event. Studies indicate that approximately one in three women who experience early miscarriage will develop post-traumatic stress.[13] Miscarriage bereavement leave in comparable jurisdictions, including New Zealand and the United Kingdom, requires no statutory minimum gestation period to determine eligibility for leave.[14] The NES, in requiring a minimum gestation period of 12 weeks, prevents most people who need unpaid special parental leave from accessing it. Ideally, we would suggest that an alternative name to 'parental leave' be applied for leave to recover from miscarriages, such as 'pregnancy loss leave' or 'gestational loss leave'.

[10] *Carer Recognition Act 2010* (Cth) s 4.
[11] *Fair Work Act 2009* (Cth) s 80.
[12] Miscarriage Australia, 'What is miscarriage?' (Web Page, 23 May 2025). Accessed via <https://miscarriageaustralia.com.au/understanding-miscarriage/what-is-miscarriage/>.
[13] J Farren, M Jalmbrant, N Falconieri, N Mitchell-Jones, M Bobdiwala and A Al-Memar, 'Posttraumatic Stress, Anxiety and Depression Following Miscarriage and Ectopic Pregnancy: A Multicenter, Prospective, Cohort Study' (2020) *American Journal of Obstetrics and Gynecology* 222(4) (article S0002-9378(19)31369-9). Accessed via <https://www.ajog.org/article/S0002-9378(19)31369-9/fulltext>.
[14] See *Employment Rights Bill* (UK) cl 18 and *Holidays Act 2003* (NZ) s 69.

Recommendation 4

We recommend minimum gestation period for unpaid special parental leave under s 80(1)(ii) of the FWA is changed from 12 weeks to 6 weeks.

We recommend that where unpaid special parental leave is utilised for or applied to miscarriages, that it be called a more appropriate name, such as 'pregnancy loss leave'.

Paid domestic violence leave

18. We recognise that paid domestic violence leave is outside the scope of this inquiry, however, we submit that fulsome examination of women's workforce participation requires acknowledgement of the impact of gender-based violence.

19. Reports have indicated low rates of uptake for paid domestic violence leave by both employees and employers, with approximately 45% of victim-survivors who were eligible taking alternate forms of leave instead.[15] Employer lack of awareness, hostility, breaches of privacy and requests for excessive evidence contributed to the low uptake of the entitlement.[16]

20. Reform opportunities to improve uptake include lowering the evidentiary threshold for proving violence to accept a statutory declaration as sufficient proof of violence, and the development of national training standards to ensure employers are aware of their obligations and responsibilities.[17]

21. Paid domestic violence leave is an essential entitlement that, where implemented correctly, provides a critical lifeline for women in crisis. We agree with the Recommendations from the Independent Review of paid domestic violence leave

[15] Australian Government, *Australian Government Response to the Independent Review of the Operation of the Paid Family and Domestic Violence Leave Entitlement in the Fair Work Act 2009 (Cth)* (Report, Department of Employment and Workplace Relations, 25 February 2025). Accessed via <https://www.dewr.gov.au/download/16873/australian-government-response-independent-review-operation-paid-family-and-domestic-violence-leave/39624/australian-government-response-independent-review-operation-paid-family-and-domestic-violence-leave/pdf>.
[16] Renata Casado, Kantha Dayaram and Mihajla Gavin, *A Review of the Effectiveness of Paid Family and Domestic Violence Leave Entitlement Since Its Implementation as a National Employment Standard in Australia: Multi-stakeholder and Lived Experience Perspectives* (Research Report, The University of Western Australia, 2025). Accessed via <https://api.research-repository.uwa.edu.au/ws/portalfiles/portal/572028681/FDV_Leave_Report_-_Final_2025.pdf>.
[17] Ibid.

and welcome the Closing Loopholes statutory review as an opportunity to provide more comprehensive consultation.[18]

Right to request flexible working arrangements

22. Flexible work arrangements are key to promoting the FWA objects of gender equality, non-discrimination and the balancing of work and family responsibilities. We recognise that the Right to Request provisions are outside the scope of this inquiry. However, to comprehensively consider the impact of the NES on marginalised workers, it is necessary to examine how statutory definitions and continuous service requirements operate to prevent workers from accessing entitlements designed to promote their equitable participation in the workforce.

Workers with disability

23. The rate of labour force participation for working aged people with disability is 60%, compared to 84% for people without disability.[19] This is largely driven by factors including inaccessible recruitment processes and difficulty obtaining reasonable accommodations.[20] Women with disability experience higher rates of discrimination in all areas of public life.[21] Gendered disability violence is more severe, persistent and likely to result in serious injury.[22]

24. The threshold for a person with disability to access flexible working entitlements under the NES is unjustifiably high. To comply with the FWA definition of disability, an individual must be eligible for a disability support payment under the *Social Security Act 1991* (Cth) (**SSA**). To be eligible for a disability support payment under the SSA, one needs to establish at least 20 points of impairment, requiring *severe* functional impact on activities requiring physical exertion or stamina. This would require, for example, a person to have a physical disability so severe as to require a wheelchair or a psychosocial disability that causes severe difficulty living

[18] Above n 15.
[19] Australian Disability Network, *Disability statistics* (Web Page, 2025). Accessed via <https://australiandisabilitynetwork.org.au/resources/disability-statistics>.
[20] Lawrence Katrina, Damian Mellifont and Kim Bulkeley, 'Disability Employment Policy in Australia: Barriers and Facilitators to Workforce Participation' (2025) *Social Policy and Administration*. Accessed via <https://doi.org/10.1111/spol.13147>.
[21] Women With Disability Australia, *The Status of Women and Girls with Disability in Australia,* (November 2019) 23. Accessed via <https://wwda.org.au/wp-content/uploads/2020/06/The-Status-of-Women-and-Girls-with-Disability-Asutralia.pdf>.
[22] ANROWS, *Women, disability and violence: Barriers to accessing justice* (April 2018) 31. Accessed via <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2019/02/19024926/Maher-et-al-Horizons-Research-Report.pdf>.

independently.

25. The 12-month continuous service requirement before workers may request a flexible working arrangement is also inconsistent with the *Disability Discrimination Act 1992* (Cth) (**DDA**) provision that requires employers to provide reasonable adjustments at all stages of employment.

26. The definition of disability in the FWA should, at a minimum, align with the definition under the DDA and the continuous service requirement minimised to provide an equitable safety net for workers with disability.

27. In our recent submission to the DDA Review, we recommended that the definition of disability within the DDA be broadened to incorporate 'health status' (to ensure that chronic illnesses, such as endometriosis, are captured) and to remove outdated language such as 'malfunction', 'malformation' and 'disfigurement'.

Recommendation 5

We recommend that the FWA adopts the definition of disability as outlined in the DDA (with the addition of 'health status' and the removal of outdated language) and that the minimum continuous service period be removed.

Workers with caring responsibilities

28. Australian women undertake 64% of unpaid care work and as such, access to flexible work is essential to their equitable participation in the workforce.[23] The FWC's interpretation of the nexus requirement in s 65 FWA requires an employee to prove the eligible attribute that triggers their right to request, as well as establish how that attribute relates to the request. In practice, this narrow view has resulted in decisions where a father's request to work from home to assist with family responsibilities was denied as it was established that his wife could manage

[23] Workplace Gender Equality Agency, *Unpaid Care Work and the Labour Market* (Insight Paper, 9 November 2016) 5. Accessed via <https://www.wgea.gov.au/sites/default/files/documents/australian-unpaid-care-work-and-the-labour-market.pdf>.

childcare with her own flexible working conditions.[24] Concerns have been raised about how this and similar decisions reinforce a 'primary model of care'.[25]

29. The 12-month minimum service requirement also conflicts with the object of the entitlement, in denying the flexibility that would be necessary to facilitate long-term workforce participation for women with caring responsibilities.

Recommendation 6

We recommend the insertion of a rebuttable statutory presumption at s 65 (1B) of the FWA to the effect of 'where an employee makes a request under subsection (1) and relies on the circumstance mentioned in subsection (1A), the request is presumed to be reasonably connected to that circumstance unless the employer establishes otherwise."

Superannuation

30-hour threshold for under 18s and private domestic workers

30. Employers must pay superannuation guarantee contributions for employees aged 18 and over, regardless of hours worked. Superannuation contributions are only guaranteed for employees under the age of 18 who work more than 30 hours per week for one employer. The 30-hour threshold also applies to private domestic workers, 88% of whom are women. [26]

31. The gender superannuation gap means that on average, in Australia, a woman will retire with a balance 25% smaller than a man.[27] This gap is driven by several compounding factors, including the lifetime cumulative impact of the gender pay gap, and greater likelihood of spending time outside of the workforce to manage reproductive health and caring responsibilities.

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[24] See Paul Collins v Intersystems Australia Pty Ltd [2025] FWC 1976 (14 July 2025).
[25] Amanda Selvarajah, 'FWC Approach to Flex Requests "Disappointing": Expert' (Workplace Express, 7 November 2025). Accessed via <https://www.workplaceexpress.com.au/news/workers-railroaded-by-rigid-flex-rules-expert-81027>.
[26] Jobs and Skills Australia, 'Domestic Housekeepers' (Web Page, 2025). Accessed via < https://www.jobsandskills.gov.au/data/occupation-and-industry-profiles/occupations/811412-domestic-housekeepers>.
[27] Super Members Council, *Closing the Gender Super Gap: Pay Super to All Under-18 Workers* (Research Report, 11 December 2025). Accessed via <https://smcaustralia.com/reports/closing-the-gender-super-gap-under-18s>.

32. Young women are significantly more likely than young men to work part-time.[28] 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.[29]

33. The 30-hour exclusion is codified in the *Superannuation Guarantee (Administration) Act* 1992 (Cth),[30] and operates alongside the FWA to oblige employers to make contributions for eligible employees.[31] To improve the efficacy of the NES in facilitating equitable working standards for marginalised workers, including women and young people, we encourage the Standing Committee to recommend the removal of the 30-hour threshold to the Treasury.

Recommendation 7

We recommend the removal of the 30-hour threshold for guaranteed superannuation contributions for workers under age 18 and private domestic workers.

Redundancy

Small business exemptions

34. Workers who are made redundant experience financial and economic detriment, regardless of the size of their employer. In the 12 months prior to February 2025, 268,000 were retrenched, with redundancy being the sole reason 12% of people left or lost a job.[32]

35. Data from the Australian Small Business and Family Enterprise Ombudsman identified that 97% of Australian businesses had less than 20 employees.[33] Given

[28] Ibid.
[29] Super Members Council, 'Under-18s super carve-out widens the gender gap, costs young women $11,000 by retirement' (Web Page, 11 December 2025). Accessed via <https://smcaustralia.com/media/under-18s-super-carve-out-widens-the-gender-gap-costs-young-women-11000-by-retirement/>.
[30] *Superannuation Guarantee (Administration) Act 1992* (Cth) s 11, s 28.
[31] *Fair Work Act 2009* (Cth) s 116B.
[32] Australian Bureau of Statistics, *Job mobility, February 2025* (ABS Catalogue No 6223.0, 29 July 2025). Accessed via <https://www.abs.gov.au/statistics/labour/jobs/job-mobility/latest-release>.
[33] Australian Small Business and Family Enterprise Ombudsman, *Number of Small Businesses in Australia* (Web Page, 2025). Accessed via <https://www.asbfeo.gov.au/small-business-data-portal/number-small-businesses-australia>.

that the FWA defines a small business as one with fewer than 15 employees, and exempts such employers from redundancy pay obligations under the NES, it is reasonable to deduce that a significant number of employees are excluded from guaranteed redundancy pay.

36. Redundancy pay exists to cushion involuntary job losses, recognise long service and allocate restructuring costs across the business rather than on the individual. The NES exemption shifts that cost entirely onto workers. In the face of a changing and volatile labour market, it's essential that the NES provides adequate job security for all employees. We submit that redundancy pay should be a universal minimum entitlement, regardless of the size of the employer.

Example scenario

Maria* is 42. She works as an office manager for a regional accounting practice employing 13 staff. She has worked there for 9 years. She earns $64,000 per year. She works 4 days per week to manage school pick-ups and care for her elderly mother. The firm loses a major client and restructures. Maria's position is made redundant. Because the firm employs fewer than 15 employees, it is a "small business employer" under the FWA and is not required to pay redundancy under the NES. If Maria had worked for a firm with 15+ employees, she would have received 16 weeks' redundancy pay (for 9 years' service), equivalent to approximately $19,692 before tax. Instead, she receives only her notice.

**not her real name – this is a scenario, based on many we have seen in the WWC.*

Recommendation 8

We recommend amending s 121 FWA to remove the exemption from the obligation to pay redundancy pay where the employer is a small business employer.

Reduction in redundancy pay after 10 years

37. Under the FWA, an employee of nine years is entitled to up to 16 weeks of redundancy pay. This decreases to 12 weeks after the tenth year of continuous service. The rationale of the reduction in preventing 'double counting' does not

accurately reflect the state-based variations in the operation of long-service leave entitlements and incorrectly conflates the two separate entitlements of long service leave and redundancy pay into one.[34]

38. Employee entitlements should not be diluted after a decade of service for the benefit of an employer.

Recommendation 9

We recommend the removal of the redundancy pay reduction after 10 years of service under s 119 of the FWA.

Incapacity to pay

39. We are concerned that s 120 FWA provides employers with an avenue through which they can circumvent their redundancy pay obligations. The ambiguous drafting of the legislation allows the provision to be triggered where an employer 'cannot pay the amount' without an express threshold for what this entails, such as liquidation or bankruptcy.

Example scenario

Riverbend Textiles* is a regional garment factory employing 48 workers, the majority of whom are women. Many have worked there for a decade or more, operating sewing machinery owned outright by the company. When a major contract ends, the company decides to reduce its manufacturing arm and make 20 machinists redundant. Each woman, with around 10 years' service is entitled under the NES to 12 weeks' redundancy pay. Instead of selling its machinery or entering administration, the company continues trading in a reduced capacity. Riverbend Textiles applies to the FWC to avoid paying redundancy under s 120 FWA, arguing that it "cannot pay" due to short-term cash flow constraints. Although the business retains valuable assets and remains solvent, the FWC reduces redundancy pay to four weeks per employee.

**Not a real company name*

[34]National Union of Workers and Others v Victorian Employers' Chamber of Commerce and Industry and Others [2004] PR03/2004 (Fair Work Commission, Bedford P, Ross VP and Deegan C) 26 March 2004, 154. Accessed via < https://www.fwc.gov.au/documents/decisionssigned/html/pr032004.htm>.

Recommendation 10

We recommend removing the exception to vary redundancy entitlement where the employer cannot pay in s 120(b)(ii) of the FWA.

Redundancy post-parental leave

40. The return-to-work guarantee under the NES is an essential safeguard for workers returning from parental leave. Theoretically, an employee is guaranteed work in the same pre-leave position, or the most equivalent role if the old role no longer exists. However, according to the Australian Human Rights Commission, one in five women were made redundant, their roles restructured or dismissed during their pregnancy, period of parental leave or upon their return to work. [35]

41. The WWC has assisted many clients who have been made redundant immediately prior to their return from parental leave, or shortly after. Where an employer can prove the redundancy is 'genuine', there is no recourse for our clients despite the timing and frequency of these matters indicating a bigger trend. Too often, unscrupulous employers get away with prioritising short-term ease by targeting employees who are pregnant or new mothers.

42. The period of return from maternity leave is often one of acute economic vulnerability: women frequently return on a part-time basis, with reduced hours and diminished bargaining power, while continuing to shoulder primary caring responsibilities. Termination at this point compounds financial insecurity and entrenches gendered disadvantage at a critical point of workforce re-entry.

43. A woman who is made redundant and believes it is due to taking parental leave would be eligible, in theory, to bring a general protections claim, and the employer would face a reversed burden of proof, so would have to show reasons for selecting her for redundancy that did not include her leave. Any discovery of material suggesting that her leave was one of the factors taken into account would defeat an employer's defence. However, we are seeing increasingly restrictive practices by

[35] Australian Human Rights Commission, 'Chapter 2: Results of the National Prevalence Survey' in Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report* (Online Resource). Accessed via <https://humanrights.gov.au/resource-hub/by-resource-type/books/books-missing-assets/chapter-2-results-national-prevalence-survey>.

the FWC in conciliating general protections matters, including the denial of opening statements, legal representation, and interpreters. As of 23 February 2026, the General Protections Benchbook has been removed from the FWC website, and any applicants wishing to lodge a general protections claim must first complete a screening quiz. If they do not get the answers correct to the quiz, they are blocked from lodging a claim. General Protections claims as a remedy are increasingly inaccessible and inadequate.

44. Unfair dismissal claims and sex discrimination claims are also available avenues in certain circumstances, but even where successful, damages are limited, delays (in discrimination matters) are prohibitively long, and neither option provides adequate redress for losing a job on return from parental leave, nor does it present an adequate deterrent for the employer.

45. To ensure that pregnancy, new motherhood and caring responsibilities do not present opportunities for unscrupulous employers to target women, we recommend that where the dismissal occurs during pregnancy, parental leave, or within 6 months after return from parental leave, the employer bears the onus of establishing that the operational changes were not related to the pregnancy, the leave, or requests for flexible work or accommodations.

Case study

We assisted Rebecca* who worked as a Sales Manager on a full-time basis and went on maternity leave in early 2025. She was expected to return to work ten months later. She reached out to her employer 6 months in to her maternity leave to discuss her request for flexible working arrangements. She requested to return on a part-time basis, three days per week with a gradual transition to full-time. She received no response to her request for flexible work but instead received notice just before she was due to return to work that her role had been made redundant. Her employer stated that the company had undergone significant restructure and it would be impractical to change the working arrangements of other employees to accommodate her request for part-time work. The company is a small business with only 12 staff members, so did not pay her any redundancy pay despite nearly four years of her continued service. With our assistance, Rebecca negotiated an ex-gratia payment on the basis that her employer selected her for redundancy for prohibited reasons. She was able to negotiate a higher amount than what she would have received for redundancy pay had the company not been a small business.

*Not her real name.

Case study

Annika* was working as a manager at a small guesthouse for around six years. Her role had been permanent part-time for almost five years. While Annika was on parental leave, her employer sent her a payment of all her accrued but unused annual leave, and did not respond to Annika's requests for an explanation about the reason for the payment or the status of her employment. We represented Annika in a general protections dismissal complaint to the FWC, and wrote a letter to her employer about Annika's return to work guarantee and her other entitlements connected to parental leave. We assisted Annika to resolve her uncertainty about her employment status, confirmed her right to return to work into the role she had before her parental leave, and had her accrued but unused annual leave reinstated. Annika has recently returned to work with flexible working arrangements. Even though her employer confirmed it understood Annika's return to work guarantee, Annika believes she has not been returned to her pre-parental leave role. Annika does not know whether she should raise her concerns with her employer – even though she knows she has legal protections. She also lives in a regional town with two young children and does not know if she will be able to find other work.

*Not her real name.

Recommendation 11

We recommend a new s 389(3) in the FWA:

"For the purposes of subsection (1)(a), where the dismissal occurs during pregnancy, parental leave, or within 6 months after return from parental leave, the employer bears the onus of establishing that the operational changes were not related to those circumstances."

Fair Work Information Statement

46. The NES requires employers to provide a copy of the Fair Work Information Statement (**FWIS**) to all new employees. Whilst providing useful information about the NES and workplace relations system, it lacks specificity and relies on an employment contract to outline classifications, wages and working time protections. Since there is no legal requirement to receive a written employment

contract, many workers, especially those in low-wage sectors, are engaged in employment based on verbal agreement only.[36]

47. Academics have suggested legislating a requirement that instead of the FWIS, employers must provide employees with a written employment agreement that outlines mandatory terms, including type of employment, engagement periods, rate of pay, broad scope of duties, hours and days of work, and grievance procedures.[37]

48. This model, as adopted in New Zealand, would see the FWC develop a standard employment contract template comprised of mandatory, recommended and optional elements for employers to customise and provide to workers at the commencement of their employment.[38]

49. Mandating written employment contracts alongside the FWIS would be mutually beneficial to both parties, in ensuring both employers and employees understand their obligations, entitlements and rights.

Recommendation 12

We recommend that the NES requires a standard written employment contract to be provided to and signed by an employee at the commencement of employment, alongside the FWIS.

Recommended additional entitlements to include in the NES

Paid reproductive leave

50. 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,[39] and nine out of ten women going through menopause reduce

[36] Above n 1, 51.
[37] Above n 1, 51.
[38] Above n 1, 50.
[39] Gemma Beale and Sarah Mawhinney, *Suffering in Silence: Making the Case for Reproductive Leave in Australia* (Research Report, The McKell Institute, June 2024). Accessed via <https://mckellinstitute.org.au/wp-content/uploads/2024/06/Suffering-in-Silence-making-the-case-for-reproductive-leave-in-Australia-web-compressed.pdf>.

their working hours from full to part time, and a further 10% take time out of the labour force entirely to manage their symptoms, costing the average woman $25,000 by the time of retirement.[40]

51. A report by Bankwest Curtin Economics Centre estimates that the absence of paid reproductive health leave costs the Australian economy over $26 billion each year.[41] Crucially, it also finds that a universal entitlement of 12 paid days of reproductive health leave is projected to cost employers 30 times less than the productivity cost without it.[42] Outcomes such as improved retention, increased productivity, and lower retirement rates would considerably offset cost and have positive impacts on the workplace.[43]

52. Paid reproductive health leave would also support procedures including vasectomies, hysterectomies, miscarriages, terminations, prolapses and IVF treatment.

Recommendation 13

We recommend including 10 days of paid reproductive health leave (available immediately upon commencing employment) as an entitlement under the NES.

Paid cultural leave

53. First Nations employees experience deep and persistent racism, exclusion and discrimination in their workplaces. In the past decade there has been a 'significant' rise in racism towards Aboriginal and Torres Strait Islander people. Approximately

[40] Association of Superannuation Funds of Australia, *Menopause costs women's retirement outcomes* (Media Release, 7 March 2024). Accessed via <https://www.superannuation.asn.au/media-release/menopause-costs-womens-retirement-outcomes>.
[41] Health Services Union, *Reproductive health taboo costs economy $26 billion a year: New research* (Web Page, 13 January 2025). Accessed via <https://hsu.net.au/portfolio/reproductive-health-taboo-costs-economy-26-billion-a-year-new-research/>.
[42] Ibid.
[43] Bankwest Curtin Economics Centre, *The Costs and Benefits of Implementing a Universal Reproductive Health Leave Entitlement in Australia* (Research Report, April 2025) 38. Accessed via < https://bcec.edu.au/assets/2025/04/BCEC-Paid-Reproductive-Health-Leave-Report-20250408.pdf>.

38% of First Nations workers are mistreated at work on the basis of their cultural identity.[44]

54. Many First Nations women experience a 'triple jeopardy' of inequality,[45] whereby racism, misogyny and carer's discrimination compound to drive an accumulated 10-year gender pay gap of 38% compared to 30% for non-Indigenous women.[46]

55. Implementing a universal minimum paid cultural leave entitlement for First Nations people is a critical step towards improving cultural safety and equity in the workplace.

56. This paid leave would allow First Nations employees to tend to their cultural responsibilities, including attending Sorry Business, Native Title meetings, naming and birthing ceremonies. In addition, it would provide greater job security, recognise the critical importance of certain cultural obligations, and prevent First Nations employees from having to choose between job security and cultural obligations.

Recommendation 14

We recommend including paid cultural leave of 10 days for First Nations employees as a minimum entitlement under the NES.

Enforcement and regulation

Expansion of Fair Work Commission arbitration powers

[44] Rachael Knowles, 'Racism Is Forcing More Indigenous People to Leave the Workforce' (SBS NITV, 16 October 2025). Accessed via <https://www.sbs.com.au/nitv/article/indigenous-people-are-being-forced-to-leave-the-workforce/kgtk99zkr>.
[45] Madeline Hislop, 'Indigenous Women with Caring Responsibilities Most Likely to Face Discrimination at Work' (*Women's Agenda*, 25 October 2021). Accessed via <https://womensagenda.com.au/business/employers/indigenous-women-with-caring-responsibilities-most-likely-to-face-discrimination-at-work/>.
[46] Alexandra Giorgianni, 'First Nations Women Have the Largest Gender Pay Gap in Australia, New Study Reveals' (*National Indigenous Times*, 10 August 2025). Accessed via <https://nit.com.au/10-08-2025/19555/first-nations-women-have-the-largest-gender-pay-gap-in-australia-new-study-reveals>.

57. There is no current mechanism through which to expressly resolve disputes regarding unpaid NES entitlements. We recommend expanding the FWA to grant the FWC specific powers to arbitrate all breaches of NES.

Recommendation 15

We recommend amending the FWA to grant the FWC specific powers to arbitrate breaches of all NES entitlements.[47]

The importance of strategic and targeted enforcement

58. Vulnerable workers engaged in low-wage, precarious or unlawful labour arrangements are among the least likely to report their unpaid entitlements.[48] To address structural inequality, a proactive and targeted approach to compliance is necessary to ensure improvements to the NES are effective.

59. We welcome the Fair Work Ombudsman's identification of the heavily feminised aged care and disability sectors as priority targets for enforcement and compliance.[49] However, we note that gender is not expressly considered a vulnerability under the current Compliance and Enforcement policy.[50] Without recognition of the gendered manifestation of workplace exploitation, enforcement activities will not effectively address the systemic inequality that exists in the industrial relations landscape. The gender disparity in working conditions means that even where enforcement is successful, recovered entitlements will still be less

[47] We note that this recommendation is likely to confront the usual 'Boilermakers' constitutional arguments that only courts can make binding determination of legal rights in our federal system. The solution would be to either frame NES disputes as interests disputes (much as unfair dismissal applications are framed) and give the FWC to determine a fair compromise of a claim, OR continue to treat the disputes as rights disputes, and argue for the establishment of a new small claims court affiliated with the FWC to determine small claims matters.

[48] For example, 97% of migrant workers experiencing exploitation do not report to the Fair Work Ombudsman. See Bassina Farbenblum and Laurie Berg, *Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia* (Report, UNSW Law Research Series No 1, 2019).

[49] Office of the Fair Work Ombudsman, *Office of the Fair Work Ombudsman Annual Report 2024–25* (Annual Report, 30 September 2025) 43. Accessed via <https://www.fairwork.gov.au/sites/default/files/2025-10/office-of-the-fair-work-ombudsman-2024-25-annual-report.pdf>.

[50] Office of the Fair Work Ombudsman, *Compliance and Enforcement Policy* (Policy, January 2025, updated April 2025) 16. Accessed via <https://www.fairwork.gov.au/sites/default/files/migration/725/compliance-and-enforcement-policy.pdf>.

substantial than those recovered in male-dominated industries.

60. We are concerned that the prevalence of precarious and non-standard work in feminised industries will limit enforcement activity for these priority groups due to limited NES coverage. To be effective, we encourage the FWC to explicitly consider the gendered nature of the non-compliance they seek to address.

Recommendation 16

We recommend that the Fair Work Ombudsman review its Compliance and Enforcement Policy following the NES reforms to explicitly consider the gendered factors that contribute to non-compliance.

The need for a statutory review mechanism

61. The FWA has recently undergone significant amendments with the implementation of the Closing Loopholes Bills that are currently under statutory review. We recommend that the NES reforms include a legislative requirement for regular and ongoing review following commencement to ensure provisions are operating as intended. We recommend particular assessment of the effectiveness of the NES reforms in providing equitable and minimum labour standards for non-standard, precarious and vulnerable workers, including women, First Nations workers, migrant workers, young workers and workers with disability.

Recommendation 17

We recommend a five yearly review of the effectiveness, utility and adequacy of the NES.