Centre for Future Work

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To: Dr Carina Garland
House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training

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

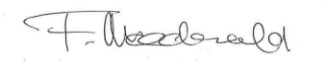
The Centre for Future Work welcomes the opportunity to make this submission to the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training Inquiry into the operation and adequacy of the National Employment Standards.

The Centre for Future Work is an independent research centre that conducts and publishes research into a range of labour market, employment, and related issues. Since the Centre's establishment in 2016 a key focus of the Centre's research has been on working conditions and standards and the role these play in creating decent work and incomes, enabling work-life balance, addressing gender and other inequalities and supporting workforce wellbeing. Our full research catalogue can be found at futurework.org.au.

Protections provided in the National Employment Standards should provide a strong foundation of enforceable minimum standards for decent work, along with other safety net mechanisms such as Awards.

In this brief submission our focus is on two standards – carer's leave and maximum weekly hours – that we have identified as not fit for purpose and/or inadequate through our research.

We would be happy to provide any further information to the Committee.



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Personal/Carer's leave

The NES Personal/Carer's leave entitlement is inadequate as a safety net standard for workers with care responsibilities. As personal and carer's leave are a single entitlement, employees who need to provide care to others do not have the same access to personal leave to meet their health needs as other employees. The scope of personal/carer's leave is too narrow, applying only to illness, injury or emergency, and the applicability of the provision, restricted by a narrow definition of carer, leave many employees without access to necessary leave for their own health care and leave to provide essential care for significant others.

Most care for older people and support for people with disability in households is provided by carers who are family members, friends and others in the community.[1] The ABS estimates that there were 3 million carers in 2022, representing 11.9% of all Australians living in households. Almost one in eight (12.7%) females and one in nine males (11.1%) are carers. Three in four carers (74.5%) are in the labour force. This estimate does not include the millions of working parents who care for non-adult children.[2]

As personal/carers leave comprises both sick leave and leave to care for others, employees who provide care do not have the same amount of sick/personal leave as other employees. Yet various studies and surveys have found carers experience poorer health and wellbeing than non-carers. Thus, worker/carers can find themselves unable to meet their own health needs or forced to exit the labour market.[3]

As more women provide care (and spend more time providing care) than do men, poorer access by carers to personal leave perpetuates gender inequality. The lesser entitlement casual employees have to carer's leave in the NES (2 days' unpaid leave only) is likely to be another contributor to inequality. Carers are often in casual work *because* of their need for part-time work hours and/or flexibility. While they are disproportionately located in employment in which they do not have equitable access to safety net carer's or personal leave, they are the very employees most in need of this leave to manage work and care and maintain their employment.

Under the NES access to carer's leave is restricted to where an employee is providing care to an 'immediate family or household member', which excludes access to the entitlement in many circumstances by employees who provide essential care to people significant to them who require care. One proposed solution to address this problem has been to widen the definition of 'family member'. Extension of carer's leave for employees to provide care to a significant person to whom they

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[1] Hamilton, M, Charlesworth, S & Macdonald, F (2024) Informal care policy: Needs of older people and people with disability or chronic illness, in Marian Baird, Elizabeth Hill and Sydney Colussi, At a Turning Point: Work, Care and Family Policies in Australia. Sydney: Sydney University Press, pp. 121-144.

[2] The ABS definition of carer is a person who provides any informal assistance to people with disability or older people aged over 65. So, this estimate does not count parents or other informal carers of non-adult children without a disability. Australian Bureau of Statistics (2022) Disability, Ageing and Carers, Australia: Summary of Findings https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release

[3] See Carers Australia (2025) Caring for others and yourself: Carers Wellbeing Survey 2025. https://www.carersaustralia.com.au/wp-content/uploads/2026/01/CWS25_Report_300126_v2_.pdf; See also The Senate Select Committee on Work and Care (2022) Interim Report, pp. 77-80. and (2023) Final Report, pp. 145-150 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care

provide care would account for the day-to-day care practices of all employees, recognising the diversity of cultural practices, family and social relationships that underpin essential care in our communities. Access to leave must be flexible enough to take account of the realities of care provision in many families and communities – for example the need to provide occasional care to enable another carer in family respite.

The scope of care for which carer's leave is available is also too narrow making it unfit for purpose in not including the range of essential care activities that carers' need to undertake. These activities include, for example, appointments with medical and other health and care professionals, activities often only able to be undertaken on weekdays during work hours. This is also the case for personal leave.

We recommend that:

- Paid carer's leave be a separate entitlement of 10 days (not able to be accumulated) in addition to the existing entitlements for paid personal and carer's leave.

- Carer's leave be available to casual employees and to all employees from the date of their commencement of employment.

- The scope of personal/carer's leave be expanded to enable leave for a broader range of circumstances and activities of self-care and care for others, in addition to illness, injury and emergencies.

- The definition of carer for accessing paid carer's leave be changed to include care for significant others beyond the immediate family and household members.

Maximum Weekly Hours

The NES maximum weekly hours standard should operate to establish maximum weekly hours for employees other than where the additional hours are reasonable. However, evidence on employees' working time strongly suggests the standard is not effective and work hours over 38 hours a week are relatively widespread, along with unpaid overtime.

The Centre for Future Work's annual surveys of work hours and unpaid overtime provide insight into the extent that additional unpaid hours are worked, workplace expectations that these hours wil be worked, and the detrimental impact of long hours on employees.[4]

One in three employees (32%) responding to the lastest survey, conducted in November 2025, reported that, in their workplace, performing unpaid overtime was either expected or encouraged. Survey respondents who reported they worked outside scheduled hours were asked if they felt it was necessary to do so to meet their employer's expectations. One in five (20%) reported it was 'often'

[4] Macdonald, F (2025) Too much work and too few paid hours? Unsatisfactory working hours and unpaid overtime. Centre for Future Work at the Australia Institute, https://futurework.org.au/report/too-much-work-and-too-few-paid-hours/

necessary to meet the expectations of their employer, and another two in five (40%) reported it was 'sometimes' necessary. Responses were similar for men and women and workers of all ages. From a list of possible reasons for working outside of scheduled work hours, two in five employees (40%) identified 'too much work'. 'Staff shortages' were identified by around three in ten employees (28%), and 'fewer interruptions outside work hours' by around one in four (26%). Managers' and supervisors' expectations and 'for career progression' were each identified by one in six employees (17%).[5]

Unpaid overtime has both financial and social costs for workers. The detrimental impacts on health and wellbeing of long hours of work and unpaid overtime are multiple. Two in five employees who work outside their scheduled work hours reported physical tiredness (42%), feeling mentally drained (37%), and stress or anxiety (35%). Three in ten reported interferences with personal life/relationships (31%). Around one in five workers reported disrupted sleep (23%), reduced motivation to work (21%) and poor job satisfaction (20%) as negative consequences.[6]

Long hours work cultures have been found to impact negatively on gender equality. The Senate Select Committee on Work and Care reported that research demonstrating that work-hour regulations improve the compatibility of work and family and reduce gender inequality in working hours was convincing. They also reported hearing

> … robust evidence about the impact of long hours of work and the challenges they create for working carers. Carers struggle to do jobs where long hours are regular, and this creates high bars that exclude women and carers. This contributes to a gendered work-care system where men work more, while women do more unpaid domestic work.[7]

According to ABS data, a signficant minority of full-time employees in Australian workplaces work more than 38 hours a week.[8] Many work in industries in which long-standing practices of regular long work hours are likely to reflect practices imposed by employers, as employers have been able to exert power to establish hours over 38 hours as the norm, regardless of employees' preferences or needs .

At the core of the problem with this standard is its reliance on industry norms, which need not match socially desirable standards. Among the factors the NES standard requires to be taken into account to determine if additional hours are reasonable is the 'usual patterns of work in the industry'. 'Usual patterns of work' and other factors such as 'the needs of the workplace' should not be factors to be balanced against factors such as 'any risk to employee health and safety'.

Despite the passage of time since the Fair Work Act came into effect, the jurisprudence on reasonable additional hours is not well developed. Most cases are settled before going to trial, which is not surprising as employers would not wish to attract publicity for requiring people to work excessive hours. Some aspects have been tested (for example, in a case involving unusual, unreasonable hours, which found against the employer[9]), but the major weakness appears to be in the role of norms in shaping the idea of what is reasonable.

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[5] Macdonald (2025) Figure 6, p. 15.
[6] Macdonald (2025) Figure 13, p. 17.
[7] Senate Select Committee (2023), p. xxvii
[8] ABS (2025) Labour Force, November
[9] Readdie v People Shop Pty Ltd (Penalty) [2025] VMC 3 (9 April 2025)

The provision in the Fair Work Act requiring that in deciding what is unreasonable, the Court must have regard to 'the usual patterns of work in the industry, or the part of an industry, in which the employee works' ignores the way in which power relations shape the usual patterns of work in an industry. Corporations can use their increase in bargaining power to increase working hours and then in a circular process they argue that the new level is perfectly reasonable because these are the hours that are now worked. This is a loophole that legislators should close.

In some industries the balancing of employer interests in rostering additional hours beyond the maximum of 38 hours has taken priority over the employee's rights not to have to work unreasonable hours.[10] There is a need, to revise the protections for employees against being forced to work 'unreasonable' hours above the national standard of 38 hours per week. The 'reasonable additional hours' loophole created by WorkChoices, and continued in the Fair Work Act, undermines the 'maximum weekly hours' standard.

We recommend the following changes be made to subsection (3) of section 62

- First, the NES maximum weekly hours standard should include a provisionrequiring additional hours be compensated at a higher rate to deter the practice of establishing longer hours

- Second, precedence should be given to the wellbeing of the employee. After all, this is a legislative provision regarding *maximum* reasonable hours. The limits to maximum hours in awards, and subsequently legislation, arose to protect and advance the wellbeing of employees, not to advance the needs of the enterprise. The fact that, in some industries, power has shifted from workers to employers to enable the latter to increase 'usual' hours means that employee well-being is being compromised. High rates of labour turnover in the mining industry, well above those that would be predicted by its level of wages, is further evidence of this.[11]) Subsection (3) should therefore unambiguously state that the criteria presently specified in paras (a) and (b) have primacy over those that follow.

- Second, para (g) of s62(3), which gives as a criterion by which to assess reasonableness 'the usual patterns of work in the industry, or the part of an industry, in which the employee works', should be deleted and replaced by

  > (g) whether the circumstances leading to the requirement to work additional hours is a short-term issue for which no alternative arrangements could be found by the employer.

- Third, an employer should not be able to unilaterally suspend an employee for refusing to work additional hours if the employee does so because his or her roster has been unilaterally changed with the effect of forcing him to regularly work more than the maximum weekly hours. To do so should be considered adverse action by the employer. In turn, the onus of proof in arguing that it is reasonable to require the employee to work more than the additional hours should fall on the employer. Consideration should be given to enable the Fair Work

[10] MacPherson v Coal & Allied Mining Services Pty Ltd (No.2) [2009] FMCA.

[11] Peetz, D. and G. Murray (2011). You Get Really Old, Really Quick': Involuntary Long Hours in the Mining Industry. Journal of Industrial Relations 53(1): 13-29.

Commission, rather than a Magistrates' Court, to deal with employer applications to require employees, who refuse to work additional hours, to in fact do so.

The above amendments would not lead to, say, the end of rotating 12-hour shifts in the mining industry or elsewhere. There are many employees who still prefer to be employed under such rosters, and no doubt organisations would still find them the lowest cost option. However, it will require organisations to take account of the interests of employees if they seek to develop roster patterns that have the potential to require employees to work more than the maximum weekly hours set out in the Fair Work Act. Given the wide diversity of shift practices already in place, this is something that organisations can do.