



Chamber of Commerce
and Industry WA

Standing Committee on Employment, Workplace Relations, Skills and Training

Inquiry into the Operation and Adequacy of
the National Employment Standards

24 February 2026

Introduction

The Chamber of Commerce and Industry Western Australia (CCIWA) is the peak body advancing trade and commerce in Western Australia.

We represent over 7,000 businesses, of all sizes and within all sectors, including health and community services, agriculture, defence, mining, housing, energy, resources, and manufacturing. We are committed to using our insights to develop and advocate for public policies that will help realise our vision of making WA the best place to live and do business.

We thank you for the opportunity to provide comment.

In what follows, we provide some overarching comments, before outlining four important areas of recommended reform, related to: single set of standards; public holidays; long service leave and award flexibility.

Overarching comments

Australia's industrial relations system is intended to be fair and balanced for all parties. However, the current system creates unfair imbalances in the employee-employer relationship. Furthermore, the system is so complex that even corporations with sophisticated payroll systems are making errors, leading to multi-million-dollar underpayments.

With a system like this, a small business, lacking resources and expertise, naturally face significant difficulty in ensuring compliance with all relevant awards and workplace laws.

Unfortunately, despite all the statutory reviews of specific provisions, the industrial relations system is not focused on delivering long-term productive outcomes, higher wages and, ultimately, greater prosperity for Australians.

Despite this, there is one part of the industrial relations system that is working well for both employers and employees - the National Employment Standards (NES). We argue the NES is effective in setting minimum standards and a safety net. They are not in place to influence or change what might be an industry norm or standard.

For this review, CCIWA cautions any wholesale change to the NES, especially with respect to expanding NES entitlements into more contested areas, or to those who are not employees. For example, expanding entitlements to reproductive leave, to consultation around digital work and new technology, and to independent contractors.

By their universality, any change can have a significant and varied effect beyond just the simple redistribution of benefits between employers and employees, in either direction. This could affect employment levels, consumer pricing and the ability of firms to sustain or increase workers' wages over time.



It is important to note, and it is recognised by many Fair Work Commission decisions, that increases in workers' entitlements comes at a cost to the employer.¹ This, however, does not mean that system improvements cannot be made. Further simplification is crucial, particularly around the operation of the NES and awards.

In what follows, we propose four key areas of reform that we suggest would make it easier for businesses, in particular small businesses, to comply with and better serve the needs of employees and employers.

A single source of minimum standards

There are numerous items present in awards that are either direct copies of, or are already dealt with, in the NES. This includes the process to cash out annual leave.

The Commission has done considerable work in amending awards to refer to the NES provisions. For example, with the changes to the definition of casual employment.

However, the Government should support the Commission to do a more substantive review of awards. This would ensure that where the NES is primarily responsible for the provision of an entitlement, it is referred to in awards and employers and employees know that it is the single source of truth. This would ensure consistency and simplicity across the system.

In this process as well, the Government should consider whether the current wording of the NES is appropriate and reflective of the easiest way to express each entitlement. As they are the minimum standards, it is crucial that they are as simplified as possible, including the process of leaving their practical application to be determined by the employer and employee.

Award provisions are often very prescriptive and vary across individual awards, and how they sit against the NES is one aspect that should be considered and likely easily addressed. These differences result in a complex situation and makes compliance for business harder, while making it harder for employees to understand what they're actually entitled to.

For example, where a business may have an employee on an award; an employee on an old enterprise agreement; and an employee who is award/agreement-free having separate processes for cashing out annual leave.² In these situations, it would be more appropriate to revert to what is provided for in the NES for award/agreement-free employees.

¹ See for example: *2025 Annual Wage Review* [2025] FWCFB 3500

² See for example: FW Act ss 93, 94; *Clerks—Private Sector Award 2020*, Clause 32.9.





RECOMMENDATION: SINGLE SOURCE OF MINIMUM STANDARDS

The Federal Government should task the Fair Work Commission to vary modern awards to ensure that the NES is appropriately referenced, reducing ambiguity and complexity.

Where changes occur, but produce the same outcome, the Government should direct the Commission to simplify the award to the NES minimum – such as in the example of cashing out leave.

Clarity in Public Holidays

Since its introduction, the *Fair Work Act 2009* (Cth) (*FW Act*) has conflicted with the operation of public holiday legislation, which is governed by State and Territory jurisdictions.

Prior to the introduction of the *FW Act*, most federal and state awards and agreements provided for the substitution of public holidays when they fell on the weekend. This was based on the 1995 '*Public Holidays Test Case*', which established ten public holidays for workers per calendar year, regardless of days or hours worked.³

At the time, award and agreement terms typically provided employees with penalty rates for work performed on the actual public holiday or on the additional day, but not on both.

Section 115(1)(b) of the *FW Act*, where it states that "*any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory...*" results in additional public holiday days, which vary by jurisdiction.⁴ This creates significant uncertainty for employers and employees, particularly employers who operate across multiple jurisdictions. For further information, see State and Territory Legislation expanding public holidays from the intended position.⁵

Multiple Government-initiated reviews of the *FW Act* and workplace relations system have identified this as a having a significant impact on employers. For example, in the 2012 review of the Fair Work Act, the Panel recommended that the Government limit the number of public holidays under the NES for which penalty rates apply to a nationally consistent number, which at the time was 11.⁶

³ PR L9178.

⁴ FW Act s 115(1)(b).

⁵ *Public and Bank Holidays Act 1972* (WA) schedule 2, *Public Holidays Act 1993* (Vic) s 7, *Holidays Act 1983* (Qld) Schedule Public Holidays, *Public Holidays Act 2023* (SA) ss 3(2), 3(3), 3(4).

⁶ Recommendation 8 of Ron McCallum, Michael Moore, John Edwards, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation* (Report, 2012). (*2012 FW Act Review*).



The Panel noted:

“the uncertainty with current arrangements for employees and employers and the potential additional costs for employers concerns the Panel. To overcome these concerns, the Panel’s view is that under the NES, there should be a nationally consistent number of public holidays each year for which penalty rates are payable, **and that the number of days for which penalty rates are payable should not be able to be increased by declaring additional or substitute days by state and territory governments.**”⁷ (Emphasis Added)

In 2015, the Productivity Commission also recommended amending the NES so that newly designated State and Territory public holidays are not subject to public holiday penalty rates or a paid day of leave.⁸

Importantly, at the time of introduction of the NES, the Federal Government did not intend to create public holidays beyond the standard ten days. In fact, the Explanatory Memorandum stated explicitly that employers were not required to provide public holiday entitlements on two days in respect to one holiday.⁹

CCIWA continues to argue this anomaly should be addressed and recommends that the Committee consider amending the NES to legislate that only 11 nationally recognised public holidays are eligible for public holiday penalty rates or a paid day of leave.

By doing this and allowing States and Territories to still provide substitution days, it would ensure that employers are only paying once for the public holiday. The changes would also address the instances where State and Territory public holiday legislation creates additional public holidays when the day lands on a weekend.¹⁰

This would provide certainty for employers and employees and still allow for enterprise agreements, and individuals to negotiate to cover additional days of public holidays.



RECOMMENDATION: PUBLIC HOLIDAYS

The Federal Government should amend the NES to only cover a set number of public holidays and allow for those to be substituted, as is currently allowed. This would mean newly designated or additional public holiday days created for a single public holiday would not be covered.

⁷ 2012 FW Act Review, page 103.

⁸ Productivity Commission ‘Workplace Relations Framework’, Volume 1, Chapter 16 [539] - [540].

⁹ Fair Work Bill 2008, Explanatory Memorandum, paragraph 457.

¹⁰ Examples include: *Public and Bank Holidays Act 1972 (WA)* creates additional days for Australia Day, New Years Day, Anzac Day or Christmas day when falling on a weekend; *Public Holidays Act 2023 (SA)* creates additional days for Proclamation day (26 December), Christmas Day, New Years Day, and Australia Day.



Long Service Leave

Long Service Leave (LSL) provisions in the NES have continued to be a significant issue for employers, especially operating nationally.

Multiple reviews into the Workplace Relations framework have recommended the development of a formal national minimum standard for LSL.¹¹ Governments of both persuasions have promised business that a uniform standard of Long Service Leave would be finalised. However, there continues to be a lack of willingness of State and Territory Governments to work together to bring forward a nationally consistent minimum standard.¹² Divergent views on LSL entitlement continue to exist.

It should be a matter of priority for governments to reach a nationally consistent minimum standard for LSL. This will reduce one of the many impediments that continue to exist in delivering a unitary industrial relations system.



RECOMMENDATION: NATIONALLY CONSISTENT LONG SERVICE LEAVE

The Federal Government should work with States and Territories to bring forward a nationally consistent minimum standard on Long Service Leave. This should include on the rate of entitlement, and provisions of eligibility.

In addition, the NES provisions for LSL continues to be transitional and significantly complex in nature, due to their reference to pre-reform awards and agreements.¹³ The Federal Government should, while working towards delivering a nationally consistent minimum standard for LSL, revise the NES to reference that employees derive their entitlements from State and Territory legislation.

This, while not consistent with a unitary system, meets the goal of ensuring easier understanding of LSL entitlements, both for employees and employers. The *Fair Work Act 2009* is in its 16th year of operation, and the number of staff that are covered by pre-reform agreements/awards continues to reduce. Therefore, it is appropriate that simplification occurs in this area.

¹¹ 2012 *FW Act Review*, Recommendation 7; Productivity Commission 'Workplace Relations Framework', Volume 1, Chapter 16 [525] - [528].

¹² Senate Education and Employment References Committee, *Inquiry into the feasibility of and options for, creating a national long service standard and the portability of long service and other entitlements*, Submission by Department of Employment No. 33 (16 December 2025) [3] - [4].

¹³ FW Act s 113.





RECOMMENDATION: REMOVE COMPLEX TRANSITIONAL ARRANGEMENTS.

The Federal Government should legislate to remove the transitional Long Service Leave arrangements present in the NES and simply refer to the non-exclusion of Long Service Leave legislation in States and Territories by referring to section 27(2)(g) of the Fair Work Act.

Additional Flexibility for Award Employees

For productive modern workplaces, flexibility is crucial. This enables businesses to meet the needs of their customers, and it allows employees to take on work in a way that fits with their life.

Unfortunately, our current rigid structure of industrial relations makes achieving flexibility harder, resulting in poorer outcomes for business and employees. While award/agreement-free employees can make more flexible arrangements with their employer, award-covered employees often can not.

As an example, currently an award-covered employee may be unable to leave work for school pick up, and finish their work in the evening, without over-time rates applying.

For this reason, through the NES, the Federal Government should consider implementation of minimum levels of flexibility for employees who are captured under award arrangements.

This should include the ability for employees and employers to agree on flexible part-time employment arrangements, with the ability to readily adjust ordinary hours on any day with agreement of both parties. This is crucial for those who have caring responsibilities, as there will be times they can work for a greater or less duration of hours.

Under many award provisions, it's currently not possible for such arrangements to take place without extensive administrative burden and, sometimes, expensive increases in contingent rates.¹⁴ This leads to employees either having to decide to be casual to gain access to additional hours where they can, or to just accept less hours. This hurts businesses and employees' pockets, at a time when costs pressures are evident and labour markets remain tight.

Alongside part-time changes, the Federal Government should also consider provisions that give day workers who are working remotely the ability to work outside the spread of

¹⁴ Such examples include: cl 10 *Restaurant Industry Award MA000119*, cl 10.5 *Vehicle Repair, Services and Retail Award 2020*, cl 10.8 *Manufacturing and Associated Industries and Occupations Award 2020*.



hours in their relevant award and to break up their work periods, provided that their employer agrees.

Similar to part-time changes, flexibility to expand span of hours will provide more flexibility to employees to work around other responsibilities. This will help employers to offer award-covered employees similar flexibility that can already be provided to award/agreement-free employees.

Unfortunately, because of recent amendments to the *FW Act* by the Federal Government, such award terms are unlikely to be possible.¹⁵ This is why it can only be dealt with through provisions of the NES, as they underpin the system.

The Government should also consider such flexibility arrangement for additional scope of hours for award-covered employees. This would help reduce the administrative burden for business and give those who want to work more, but are covered by the award system, an easier pathway to additional hours.



RECOMMENDATION: PROVIDE AWARD EMPLOYEES A LEVEL OF FLEXIBILITY

The Federal Government should legislate a greater level of flexibility for award-covered employees, including more flexible part-time employment arrangements and the ability to spread working arrangements outside of usual hours.

These changes would give award-covered employees additional flexibility that award/agreement-free employees already enjoy.

Conclusion

While navigating Australia's industrial relations system remains fundamentally complex and a hit to Australia's productivity, the NES is one part of that system that does work because, unlike many other parts of the system, it has not become politicised or highly contested.

In this submission, we have presented some sensible recommendations, which work in the interest of employers and employees. We caution any contentious changes being forced into the NES that shift this balance.

These recommendations would ensure that employers and employees can easily understand their obligations and entitlements with greater clarity and simplicity. They are uncontroversial and have been recommended previously by independent reviews.

¹⁵ *Fair Work Legislation Amendment (Protecting Penalty and Overtime Rates) Act 2025.*



With respect to additional flexibility, the changes CCIWA proposes are in keeping with modern workplaces and expectations. They open more pathways to allow businesses to shape their workforce, and for employees to shape how they work, in a collaborative and mutually beneficial way. This should be the intent of a long-term sustainable industrial relations system.

Once again, we thank you for the opportunity to provide comment.





Chamber of Commerce and Industry WA

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CCIWA acknowledges there are a diversity of views on policy issues within its vast membership, and that as such there may be different views on the issues included within this publication.

CCIWA seeks to understand the views of all its members, and ultimately, in keeping with its Constitution, forms policy positions consistent with the long term interests of the overall economy, for the benefit of communities in WA.

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